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Decision **PROPOSED DECISION OF ALJ SULLIVAN** (Mailed 4/4/2012)

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

Application of CALifornians for Renewable Energy, Inc. (CARE) to modify Decision 06-07-027.

Application 10-09-012  
(Filed September 20, 2010)

**DECISION GRANTING MOTION OF  
PACIFIC GAS AND ELECTRIC COMPANY TO DISMISS APPLICATION**

**1. Summary**

This decision grants the motion of Pacific Gas and Electric Company to dismiss the application of CALifornians for Renewable Energy (CARE) for modification of Decision (D.) 06-07-027. CARE presents no new information concerning the health consequences of the radio frequency (RF) emissions from SmartMeters, which are one/six thousandth of the Federal health standard at a distance of 10 feet from the SmartMeter and far below the RF emissions of many commonly used devices.<sup>1</sup> It is therefore not reasonable to reopen our prior SmartMeter decision to address the alleged health impacts produced by RF emissions from SmartMeters following the procedures of the California Environmental Policy Act.

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<sup>1</sup> A similar application by the EMF Safety Network seeking an investigation into the health effects of emissions from SmartMeters was dismissed in D.10-12-001.

CARE also provides no new or changed facts to support its allegations as required by Rule 16.4 of the Commission's Rules of Practice and Procedure that SmartMeters created the ignition source for the September 9, 2010 gas explosion in San Bruno California.

This proceeding is closed.

## **2. Factual Background**

CALifornians for Renewable Energy (CARE) filed this application "to stay further deployment of PG&E [Pacific Gas and Electric Company] SmartMeters until PG&E provides the Commission evidence of compliance with 47 CFR 15.5b" and to request that the Commission order "PG&E to remove any SmartMeter equipment subject to [sic] be required to cease operating the device and remove them upon notification by a FCC representative that the device is causing harmful interference."<sup>2</sup> The Application also asks that PG&E "conduct an analysis of PG&E's AMI deployment pursuant to the requirements of the California Environmental Quality Act (CEQA) including a health and safety impacts associated with the project and the an [sic] assessment of risk from the meters including following FCC as well as international standards testing protocols [sic]."<sup>3</sup>

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<sup>2</sup> Application of CALifornians for Renewable Energy, Inc. (CARE) to modify D.07-07-027 (Application), September 20, 2010, at 4.

<sup>3</sup> *Id.*

PG&E opposes these requests and asks the Commission to dismiss the application. PG&E argues that “the field of radio frequency (RF) regulation is pre-empted by federal law.”<sup>4</sup> Concerning CARE’s allegation that the SmartMeter was the ignition source for the San Bruno fire, PG&E argues that the allegation is “unsupported and irresponsible.”<sup>5</sup>

### **3. Procedural History**

CARE filed this Application on September 20, 2010.

On October 14, 2010, Resolution ALJ 176-3262, preliminarily categorized the proceeding as ratesetting and anticipated that no hearings would prove necessary to resolve this matter. We affirm these preliminary determinations.

On October 20, 2010, the Division of Ratepayer Advocates (DRA) filed a response to the Application.<sup>6</sup>

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<sup>4</sup> Pacific Gas and Electric Company’s Motion for Dismissal of Application 10-09-012 and Declaration of Daniel M. Partridge in Support Thereof (Motion to Dismiss), October 25, 2010, at 2.

<sup>5</sup> *Id.*

<sup>6</sup> Response of the Division of Ratepayer Advocates to Application of CALifornians for Renewable Energy, Inc. to Modify Decision 06-07-027 (DRA Response), October 20, 2010.

On October 25, 2010, PG&E filed a protest to this application<sup>7</sup> and a motion to dismiss the application along with a declaration supporting the motion.<sup>8</sup>

On October 26, 2010, CARE filed a reply to the PG&E protest and DRA Response.<sup>9</sup> CARE also attached to its reply a complaint filed by CARE before the Federal Communications Commission (FCC)<sup>10</sup> and a letter from the FCC to Michael Boyd.<sup>11</sup>

On November 19, 2010, PG&E filed a reply to CARE.<sup>12</sup>

On December 6, 2010, CARE filed a motion to provide supplemental information.<sup>13</sup>

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<sup>7</sup> Pacific Gas and Electric Company's Protest of the Above-Captioned Application of Californians for Renewable Energy (PG&E Protest), October 25, 2010.

<sup>8</sup> Pacific Gas and Electric Company's Motion for Dismissal of Application 10-09-012 and Declaration of Daniel M. Partridge in Support Thereof, October 25, 2010. PG&E entitled its motion as one for dismissal, but we use the terminology "motion to dismiss" throughout this decision.

<sup>9</sup> Reply to Protest of PG&E and Response of DRA to Application 10-069-012 (CARE Reply), October 26, 2010.

<sup>10</sup> Supplemental Information Amended Complaint and Request for Additional Relief, Complaint 10-C00246969, (CARE FCC Complaint), October 13, 2010.

<sup>11</sup> Federal Communications Commission, Consumer & Governmental Affairs Bureau, Consumer Inquiries and Complaints Division, letter from Sharon Bowers, Acting Division Chief, to Michael Boyd, October 20, 2010.

<sup>12</sup> Pacific Gas and Electric Company's Reply to the Response of Californians for Renewable Energy to Motion of Pacific Gas and Electric Company to Dismiss Application (PG&E Reply), November 19, 2010.

<sup>13</sup> Motion to Provide Supplemental Information to CARE's Application 10-09-012 (CARE Supplement 1), December 6, 2010.

On December 21, 2010, PG&E filed in opposition to CARE's December 6, 2010 motion.<sup>14</sup>

On January 28, 2011, CARE again asked to supplement its Application.<sup>15</sup> To its motion, CARE attached a National Transportation Safety Board Report on the San Bruno, California, natural gas explosion.<sup>16</sup>

On February, 28, 2012, PG&E filed in opposition to the January 28, 2011 motion of CARE.<sup>17</sup>

#### **4. Issues before the Commission Today**

This application is an application to modify D.06-07-027. According to the Commission's Rules of Practice and Procedure (Rules), any factual allegations in a request to modify a decision:

...must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.<sup>18</sup>

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<sup>14</sup> Pacific Gas and Electric Company's Response to CARE's Motion to Supplement its Application 10-09-012.

<sup>15</sup> Motion to Provide Supplemental Information to CARE's Application 10-09-012 (CARE Supplement 2), dated January 27, 2011 but filed January 28, 2011.

<sup>16</sup> National Transportation Safety Board, Docket No. SA-53, Exhibit No. 3-A, Office of Research and Engineering, Materials Laboratory Division, Report No. 10-119 (NTSB Report), January 21, 2011.

<sup>17</sup> Pacific Gas and Electric Company's Response in Opposition to CARE's January 27, 2011 Motion to Supplement its Application 10-09-012.

<sup>18</sup> Rules of Practice and Procedure of the California Public Utilities Commission (Rules) at 87.

The major issue before the Commission today is whether to grant PG&E's motion to dismiss or to proceed with an investigation into the issues posed by CARE. Since Commission action on the motion to dismiss requires a consideration of the issues raised in the Application and the legal arguments and evidentiary support provided, this decision reviews the application, its supplement, and the filings of parties.

#### **4.1. Positions of Parties**

The Application argues that D.06-07-027, which found that the deployment of the Advanced Metering Infrastructure (AMI) did not require a CEQA analysis,<sup>19</sup> should be rewritten to state that “[w]hile it may not be required it is within the Commission’s discretion to require an analysis of PG&E’s AMI deployment pursuant to the requirements of the California Environmental Quality Act.”<sup>20</sup> In addition, the application argues that it could not have been presented within one year of the effective date of the decision<sup>21</sup> because

CARE had no way of anticipating 1,378 electric SmartMeter complaints would be filed against PG&E’s AMI project. Additionally CARE had no way of knowing that radiofrequency interference from the deployed gas and electric SmartMeters had any potential risk associated with them of being an ignition source for a natural gas pipeline explosion.<sup>22</sup>

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<sup>19</sup> Application at 2, citing D06-07-027 at 61.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> Rule 16.4(d) requires: “If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.”

<sup>22</sup> Application at 7.

In summary, CARE's request for a CEQA study is not an argument that the decision was in error. The Application cites the history of complaints against the Smart Meter and the September 9, 2010 gas line rupture in San Bruno as reasons to support CARE's presentation of its request outside the one year period for filing a petition.

In addition, the Application notes that CARE filed a complaint with the FCC that alleges that "EMF from PG&E's SmartMeters created the ignition source"<sup>23</sup> for the San Bruno explosion. The Application "seeks therefore that D.06-07-027 be Modify [sic] to Order PG&E to stay further deployment of PG&E Smart Meters until PG&E provides the Commission evidence of compliance with FCC regulation 47CFR15.5b) [sic]" and "to remove any SmartMeter equipment subject [sic] to be required to cease operating the device and remove [sic] them upon notification by a FCC representative that the device is causing harmful interference."<sup>24</sup>

The Application also requests that the Commission order "PG&E to conduct an analysis of PG&E's AMI deployment pursuant to the requirements of the California Environmental Quality Act (CEQA) including a health and safety impacts associated with the project and the an [sic] assessment of risk from the meters including following FCC as well as international standards testing protocols [sic]."<sup>25</sup>

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<sup>23</sup> *Id.* at 4, citing Michael Boyd's 9/15/2010 complaint to the FCC.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

The DRA Response argues “CARE may be correct that a case could be made for environmental review under CEQA, but CARE has not made that case.”<sup>26</sup> Concerning CARE’s allegation of health impacts from the meters, DRA states that CARE “does not support these claims with citations to the record, or with evidence of new or changed facts relevant to these claims as required by Rule 16.4.”<sup>27</sup> Concerning CARE’s allegation that a SmartMeter was the ignition source for the San Bruno gas explosion, DRA argues that this allegation “is unsupported by any calculations based on actual RF emissions and actual materials in close proximity to the meter which could create a so-called ‘break spark.’”<sup>28</sup>

Despite this analysis of the CARE Application, DRA calls for a Commission investigation, arguing that “[t]here is clearly a high level of public concern over possible adverse safety and health impacts of the SmartMeter system.”<sup>29</sup> DRA recommends that: “PG&E should be ordered to quantify SmartMeter RF emissions and customer exposure levels.”<sup>30</sup> DRA argues further that “[t]he Commission should direct PG&E to explain what safety precautions it took in deploying SmartMeter equipment in close proximity to natural gas equipment;”<sup>31</sup> and “[t]he Commission should review SmartMeter customer

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<sup>26</sup> DRA Response at 3.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> *Id.* at 7.

complaints to determine the prevalence and magnitude of interference from SmartMeters.”<sup>32</sup>

The PG&E Protest asks that the Commission “refrain from taking any action in this docket pending resolution of PG&E’s Motion to Dismiss.”<sup>33</sup>

PG&E’s motion to dismiss argues that “the field of RF [radio-frequency] regulation is pre-empted by federal law.”<sup>34</sup> The motion to dismiss argues further that “[a]ll SmartMeter technology radios are regulated by the FCC and certified under CFR Title 47.”<sup>35</sup> On the issue of RF emissions, PG&E states that “at a distance of 10 feet, the momentary exposure to RF energy during a transmission burst from a meter with SmartMeter technology is less than one/six thousandth of the safety limits set by the FCC.”<sup>36</sup> Concerning CARE’s charge that EMF from a PG&E Smart Meter was the ignition source for the San Bruno gas explosion, PG&E argues that CARE has presented “absolutely no data or evidence to support such an allegation.”<sup>37</sup>

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<sup>32</sup> *Id.* at 8.

<sup>33</sup> PG&E Protest at 1.

<sup>34</sup> Motion to Dismiss at 2.

<sup>35</sup> Motion to Dismiss at 7; Partridge Declaration at 4.

<sup>36</sup> Motion to Dismiss at 2; Partridge Declaration at 3.

<sup>37</sup> Motion to Dismiss at 2.

In response to the motion to dismiss, CARE argues that PG&E operates “a wireless telecommunications system.”<sup>38</sup> CARE argues that a letter that CARE received from the FCC “clearly states CPUC not FCC has jurisdiction over the matters in CARE’s FCC Complaint...”<sup>39</sup> CARE expresses support for DRA’s call for a Commission investigation into the health and safety of the SmartMeter.

In reply to CARE and DRA, PG&E argues that the FCC’s letter to CARE is a “form dismissal-letter”<sup>40</sup> and that the FCC’s dismissal:

... relates to CARE’s prominent allegations that the CPUC allowed PG&E to install SmartMeters in California and that PG&E’s SmartMeters were the ignition source for the San Bruno fire. The FCC’s dismissal of the CARE complaint on jurisdictional grounds obviously aligns with the fact that the NTSB [National Transportation Safety Board] and the CPUC are investigating the cause of the San Bruno fire.<sup>41</sup>

In addition, PG&E also attaches a letter of the FCC which, PG&E argues, acknowledges the FCC’s “regulation of SmartMeter-related RF.”<sup>42</sup> Furthermore, PG&E objects to CARE’s allegation that PG&E’s SmartMeter system is a telecommunications carrier. PG&E concludes by arguing that CARE’s “Application should be dismissed.”<sup>43</sup>

On December 6, 2010, CARE filed a motion to supplement its Application, CARE Supplement 1. CARE’s motion asks that the Commission “review this

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<sup>38</sup> CARE Reply at 3.

<sup>39</sup> *Id.* at 5.

<sup>40</sup> PG&E Reply at 3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 4.

<sup>43</sup> *Id.* at 5.

video on the results of an independent test of a PG&E SmartMeter versus a pre- and post- test calibrated analog meter conducted by KION News 46.”<sup>44</sup> CARE also argues that this video and test undercuts the conclusion of a Commission-sponsored study that concluded that the SmartMeters were largely accurate.<sup>45</sup>

On December 21, 2010, PG&E responded in opposition to CARE Supplement 1. PG&E’s reply argues that CARE’s statements about the KION report are “false and misleading” and that the report “does not contain new information related to the SmartMeter issues that are the subject of CARE’s Application.”<sup>46</sup> PG&E states that:

PG&E (not an engineer hired by the news station) is conducting the subject side-by-side demonstration at the Salinas, California residence of a KION News 46 employee. PG&E installed the side-by-side demonstration at the residence on November 10, 2010. PG&E has conducted 284 such side-by-side demonstrations for customers in its service area to allow customers to compare the energy usage registered on the SmartMeter™ to the energy usage registered on an installed analog meter.<sup>47</sup>

On January 28, 2011, CARE filed a motion to supplement its Application, CARE Supplement 2. This motion sought to add the ~~National Transportation Safety Board’s (NTSB)~~NTSB’s January 2011 report regarding the September 9, 2010, San Bruno natural gas pipeline explosion to the record in this proceeding.

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<sup>44</sup> CARE Supplement 1 at 3.

<sup>45</sup> *Id.* at 4.

<sup>46</sup> PG&E December 21, 2010, Response at 1.

<sup>47</sup> *Id.* at 2.

On February 28, 2011, PG&E opposed CARE Supplement 2, arguing the substance of the NTSB report is “beyond the scope of the issues being addressed” in this application.<sup>48</sup>

#### **4.2. Discussion**

This decision finds that it is reasonable to grant PG&E’s motion to dismiss on several grounds.

In its Application, CARE requests that the Commission conduct a CEQA analysis into SmartMeters and conduct safety tests. There is no reason to conduct a CEQA analysis at this time. No party, including CARE, contends that D.06-07-027, which found that the deployment of the AMI infrastructure did not require a CEQA analysis,<sup>49</sup> committed any legal error. Moreover, the time to raise alleged legal error (in an application for rehearing) is within 30 days of the issuance of the decision. See Pub. Util. Code § 1731. In addition, to the extent that those filing complaints are dissatisfied with SmartMeters, D.12-02-014 permits PG&E customers to opt out of the SmartMeter program.

Although CARE raises issues pertaining to RF emissions and health effects from SmartMeters, it presents no new facts. DRA and PG&E are both correct in their argument that CARE fails to meet the Rule 16.4 requirement of supporting its request for modification with either citations to the record or with an “appropriate declaration or affidavit.” CARE provides no declaration, affidavit or proposed testimony.

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<sup>48</sup> PG&E February 28, 2012 Response at 1.

<sup>49</sup> Application at 2, citing D06-07-027 at 61.

The only declaration in this proceeding is the declaration of PG&E, which presents information supporting a finding that the SmartMeters do not present a health threat that requires action by this Commission. The PG&E 's declaration indicates that:

All SmartMeter radios are regulated by the FCC, either certified under CFR Title 47, Part 15, or licensed and certified under CFR Title 47 Part 90.<sup>50</sup>

And that:

SmartMeter emissions will result in exposures that, for most people and most of the time, are minute compared to existing exposure regulations. For endpoint meters, RF fields at 10 feet or beyond will be less than 0.1 microwatts per square centimeter. When compared to FCC regulation on exposure, normally 600 microwatts per square centimeter for the 900 MHz Band, the exposure at 10 feet would be more than 6000 times under the safety limits set by the FCC.<sup>51</sup>

Thus, there is no new evidence presented by this application that would cause the Commission to reach a different outcome than that in D.10-12-001.

Similarly, concerning CARE's allegation that SmartMeters were the ignition source for the San Bruno gas explosion, CARE presents no facts to support this allegation. Moreover, this issue is beyond the scope of the instant proceeding.

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<sup>50</sup> Partridge Declaration at 4.

<sup>51</sup> *Id.* at 3.

This decision denies both CARE motions to supplement its Application. CARE's December 6, 2010 motion to supplement the record (CARE Supplement 1) with information pertaining to the accuracy of the SmartMeters is denied. This issue falls outside the scope of CARE's initial application and, moreover, the Commission has considered it elsewhere. CARE's January 28, 2011 motion to supplement the record, CARE Supplement 2, with the inclusion of an NTSB study is also denied. The NTSB study is outside the scope of this proceeding.

Finally, concerning Rule 16.4(d), which requires an explanation for why the request for modification was not presented within a year of the effective date of the decision, the decision finds that CARE presented an explanation stating that the level of customer complaints were not anticipated. Because of our determination above, it is not necessary to address the issue of whether this explanation justifies the delayed filing.

### **Comments on Proposed Decision**

The proposed decision of Administrative Law Judge (ALJ) Sullivan in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_ and April 24, 2012 by CARE. There were no reply comments ~~were filed on~~ \_\_\_\_\_ by \_\_\_\_\_.

We have reviewed the comments of CARE. The comments fail to identify errors of fact or law that persuade us to modify the decision.

### **Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

**Findings of Fact**

1. D.06-07-027 found that the deployment of AMI infrastructure did not require a CEQA analysis; no party to the proceeding, including CARE, alleges that the absence of a CEQA analysis of the decision to deploy SmartMeters constitutes legal error. Moreover, the time to raise an alleged legal error (via an application for rehearing) is within 30 days of the issuance of a decision.

2. CARE fails to support any of the factual allegations in its request to modify the decision with either a citation to the record in the proceeding or with allegations of new or changed facts that are supported by an appropriate declaration or affidavit.

3. Based on the facts in this proceeding, it is not reasonable to re-open the Commission's review of SmartMeters for the purpose of considering the alleged health impacts of RF emissions from SmartMeters at this time.

4. D.12-02-001 permits PG&E customers to opt out of the SmartMeter program should they so desire.

**Conclusions of Law**

1. There is no legal necessity to re-open the Commission's review of SmartMeters for the purpose of considering the alleged health impacts of RF emissions from SmartMeters at this time.

2. There is no legal necessity to conduct a CEQA analysis of the deployment of SmartMeters.

3. The Commission should grant Pacific Gas and Electric Company's Motion for Dismissal of Application 10-09-012, October 25, 2010.

4. The Commission should deny CARE's December 6, 2010 Motion to Supplement its Application.

5. The Commission should deny CARE's Motion to Supplement its Application that was filed on January 28, 2011.

**O R D E R**

**IT IS ORDERED** that:

1. The Motion of CALifornians for Renewable Technology, Inc. to Supplement Application 10-09-012 that was filed on December 6, 2010, is denied.

2. The Motion of CALifornians for Renewable Technology, Inc. to Supplement Application 10-09-012 that was filed on January 28, 2011, is denied.

3. Pacific Gas and Electric Company's Motion for Dismissal of Application 10-09-012, filed on October 25, 2010, is granted.

4. The preliminary categorization of ratesetting and the determination that hearings are not required are affirmed.

5. Application 10-09-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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