



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

07-20-12
04:59 PM

Application of Pacific Gas and Electric Company for Approval of Modifications to its Smart Meter™ 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

**Stop Smart Meters Irvine
Opening Brief on Smart Meter Issues
July 16, 2012**

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The CPUC Ruling to Limit Health Issues from Phase 2 of the Smart Meter Hearings

Commissioner Peevey has stated in his ruling for Phase 2 of the Smart Meter hearings that health concerns are not to be included in the scope of these hearings (nor was it investigated in Phase 1). Stop Smart Meters, Irvine (SSM-Irvine) believes that the CPUC by narrowing the scope to exclude health effects from smart meters abdicated one of its primary responsibilities to

California residents; and that like with the state of Maine's Public Utilities Commission which took a similar hands off approach to health matters and whose state supreme court, on July 12, 2012, overruled it stating the Maine PUC's review of health issues was inadequate—the California Public Utilities Commission also has a responsibility--as its mission statement says—to ensure utility service safety. The Maine Supreme Judicial Court also told their PUC that it was not sufficient for the Maine PUC in fulfilling their obligation to investigate health to simply defer to another government agency, such as the FCC (something the California PUC Commissioner Peevey, himself, has done). Like the Maine PUC, the California PUC has tried to ignore the health issues from Smart Meters (saying it is out of their purview)—without doing a full and public investigation themselves (which even one of their own departments the *Division of Ratepayer Advocates* strongly recommended in 2010) of the health issues.

A Digression: The FCC is currently the “go to” governmental agency for Radio Frequency Electromagnetic standards--but the FCC's standards have not been updated since 1996 and they are based on research from the 1980's. The FCC standards according to Dr. Franz Adlkofer, who headed REFLEX (an EU funded research study which found genotoxic effects from exposure to RF) are “pseudo science “ because they ignore long term effects. Current and growing research (what Dr. Devra Davis, PhD, of *Environmental Health Trust* says is now at a “tipping point”) by health experts throughout the world are finding adverse health effects from RF at levels thousands of times below the FCC limits.

Dr. Magda Havas, professor at Trent University, in a widely circulated letter, in June 2012, listed the health effects which occur from radiofrequency electromagnetic radiation exposure below the current FCC standards. (This is the same radiation which Smart Meters emit.) Her list included the following:

- *We have evidence that microwave radiation causes DNA breaks in rat brains and in sperm.*
- *We have evidence that 2.4 ghz.--used in some cordless phones and Wi-fi [and Smart Meters]--causes primary tumors in rats (U.S. Air Force Study 1992).*
- *We have evidence that this radiation increases the permeability of the blood-brain barrier, enabling potentially toxic chemicals to enter the brain.*
- *We have evidence that it is associated with an increase in the enzyme ornithine decarboxylase that is linked to cancer.*
- *We have evidence that it increases free radicals that can cause cancer.*

- *We have evidence that it increases stress proteins and compromises the immune system.*
- *Indeed, we have epidemiological studies, in vivo studies, and in vitro studies (the three key types of scientific evidence) that microwave radiation below FCC guidelines is associated with AND causes cancer and that the mechanisms involve some combination of free radical production, increased membrane permeability, DNA fragmentation and a compromised immune system.*

What the Maine Supreme Court told its Public Utilities Commissioner was it has a responsibility to investigate and make a determination regarding health issues itself (ideally in a full public hearing). What SSM Irvine believes (backed by a growing consensus of both concerned citizens and leading experts in the field; see *Smart Meters: Correcting the Misinformation* published on July 11, 2012 in *MaisonSeine* signed by 40 scientists and health professionals) is that the California PUC needs to do the same.

No Warning Stickers/Lack of Informed Consent/Exposure of RF in Home

SSM-Irvine believes that the lack of thorough attention by the CPUC regarding health and safety issues has resulted in unsafe smart meter deployment exposing many unsuspecting families and their children to excessively high levels of radio frequency electromagnetic radiation in their personal residences. There are no RF warning labels, which the FCC and some California laws sometimes require, on smart meters. Even if there were warning labels, the very nature of the meters being placed directly on people's home and the "mesh network" which creates according to EMF consultant Cindy Sage an "extensive RF blanket over every living resident that is electrified" makes it hard for people to avoid. Sage writes

"What is most concerning is that these meters can be accessible directly at and near the face plate of the meter, so that the public cannot be restricted (these are on private property and all areas around the meter are private property that can be assumed to be accessible by both children and adults). Such access virtually guarantees that violations will occur. Access is not a controllable situation since these meters are on private property of every ratepayer, and accessible to the general public, including children playing in their backyards, side yards, or inside their home. . . . the FCC has no way to prevent harmful exposures (those which exceed federal safety limits as defined by the FCC)." (Sage, 2011).

The lack of attention by the CPUC to known health risks from radio frequency has also translated into utilities themselves taking a cavalier attitude about exposing their customers to RF radiation. Cindy Sage wrote of one such situation in an article published in *StopSmartMetersIrvine.com* in March 2012 where she discussed how Southern California Edison's webpage advised SCE customers to get up close and "read the fine print on the face of their new wireless meters once an hour to see what kind of energy use they've had." Sage wrote:

"The close distance at which consumers will have to stand to read the very small print on wireless meter displays will place them within a few inches of transmitting antennas. . . .The FCC Grants of Authorization require a separation distance of 8" or 20 centimeters. . . . We are supposed to STAY AWAY from RF transmitting devices, not stare at them. . . . The sensitivity of the eye to radiofrequency radiation is well established. SCE is putting consumers at risk with this advice. . . . Since the entire purpose of wireless utility meters is to provide consumers with timely information in order to reduce electric usage, this advice directly encourages people to place themselves at risk for damage to the eyes, and possibly for the face, neck and hands. . . .For those with multiple meters, standing with the body against other meters while trying to read information will cause more radiofrequency radiation exposure for more of the body (for example, in multifamily living units where there can be eight or twelve meters in a bank)."

Fees/No Fees The main focus of Phase Two of the CPUC hearings on Smart Meters according to the scoping ruling is to discuss costs. The utilities have submitted various requests to charge ratepayers fees which will add millions of dollars to their coffers. These include the initial fee to opt out (even, inexplicably, approved by the CPUC for people who retained their original analog); a monthly maintenance fee; exit fees (to remove an analog from a recently sold house even if the new owner wants to keep the analog); double fees for customers who get their gas and electric service from two separate utilities (SoCalGas and SCE customers); and whether those with health conditions or disabilities can be exempted (under the Americans with Disabilities Act) from having to pay fees to get an analog. What some of these utility requests appear to be are excuses for unjustified rate increases (the new owner above will, for example, have to pay the utility again to then remove the smart meter and get the analog meter back).

The fees can also be disproportionately very high. For example if the SoCalGas application to charge its customers to opt out of their "Advanced Meter" is approved, their 75 dollar initial fee and ten dollar a month maintenance fee will translate according to their own literature into a 27.3 percent increase in their customers' monthly bills. (Turn.org has said that the SoCalGas Advanced meter is "the dumbest meter yet" as people's gas usage doesn't change.)

While utilities are submitting applications for more fee increases, the fact is that ratepayers should not have to pay any opt out because all customers (whether they have a smart meter, analog or radio off but RF emitting digital meter) have paid already for many of the costs of smart meters via approved rate payer hikes and millions of dollars in stimulus monies given to these private utilities by the federal government. The ratepayers in this sense are already one group sharing various costs even if they don't benefit from each program. In addition some monies for the consequences of the private utility companies' business decisions (they chose to go with a wireless system; there were other options) could come from shareholders' profits which are very high. (Edison International for example—in 2010 which gets 80% of its profits from Southern California Edison made \$1.2 billion; its CEO's salary of \$2.9 million dollars in 2011 was an increase of \$300,000 from the prior year).

No Additional/Opt Out Fees for Those with Disabilities or Health Issues.

SSM-Irvine concurs with the legal arguments made by the *Network, CEP, Center for Accessible Technology* and others that it is a violation of the Americans with Disabilities Act as well as the Unruh Act to charge people with health issues and/or disabilities (cancer survivors who have increased vulnerability to Rf; those with pacemakers and other medical implants; the electrohypersensitive; auto immune patients; the elderly and pregnant women, among others) to have an analog. *SSM Irvine* agrees with the argument made by *Center for Accessible Technology's Opening brief June 29, 2012* that though the Smart Meters are located at one's private residence that

*"the ADA covers the services 'of' a public accommodation, not services 'at' or 'in' a public accommodation."*³³ Thus, the *Netflix Court* concluded that *"while the home itself is not a place of public accommodation, entities that provide services in the home may qualify as places of public accommodation."*³⁴

and so to charge those with disabilities who need to avoid smart meters to protect their health but at the same time also need basic utility service (which is also necessary for survival) is discrimination.

In addition to a no cost opt out for those with disabilities, the opt out because of the inherent mesh network radiation, also needs to be broadly defined—to include nearby co-located meters, and neighbors' meters (whether they be commercial business establishments or

residential). A neighbor who might want to retain a smart meter can be accommodated not by installing a smart meter but rather by installing an analog with time of use energy gages which will help accomplish the same goals (to monitor usage more regularly) without the radiation.

Lastly, Southern California Edison needs to also allow an analog option, if the customer and the utility can work out "access issues," for their 640,000 customers who have digital meters (which emit RF). Southern California Edison has said it doesn't want customers to self read these meters, but many residences which had these digital meters installed no longer have an access problem and the residents are still being denied an option for an analog. It seems reasonable, for those customers who are requesting an analog meter, that Edison, which likes to tell customers they believe in choice, would accommodate them and for the CPUC to encourage Edison to do that.

Respectfully submitted,

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Dated: July 16, 2012