



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

07-23-12
04:59 PM

Application of Pacific Gas and Electric Company (U 39 M) for Approval of Modifications to its Smart Meter Program and Increased Revenue Requirements to Recover the Costs of the Modifications.

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

And Related Matters.

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

REPLY BRIEF OF AGLET CONSUMER ALLIANCE

1. Introduction

Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, and the June 27, 2012 e-mail ruling of Administrative Law Judge Amy Yip-Kikugawa, Aglet Consumer Alliance (Aglet) submits this reply to opening briefs filed by active parties on July 16 and 19, 2012. The due date for reply briefs is July 30, 2012. Aglet will submit this pleading electronically on July 21, due to scheduling constraints during the rest of July.

2. Unreasonable differences as to rates and charges

The utilities argue that opt out charges are not contrary to the Americans with Disabilities Act (ADA) or Public Utilities Code §453 because the same rates apply to: (a) residential customers with medical conditions that might be caused or aggravated by radio frequency (RF) emissions from smart meters; and (b) all other residential customers.

Pacific Gas and Electric Company (PG&E) asserts that:

"... the Commission's imposition of opt-out fees is non-discriminatory, as any residential customer can choose

to opt out of PG&E's SmartMeter Program for any reason, or no reason, and therefore no additional 'accommodation' is required under the ADA. Likewise, Public Utilities Code Section 453(b) does not prohibit opt-out fees that are applied to all customers choosing an analog meter, without regard to their reason or medical condition." (PG&E opening brief, p. 2.)

Southern California Edison Company (SCE) makes an analogous argument.

SCE states that:

"... even if RF sensitivity were a 'medical condition,' 'medical disability,' or 'physical disability' covered by Section 453(b), the Commission's imposition of opt-out fees does not discriminate because *all* opt-out customers pay the same opt-out fee regardless of their reasons for opting out." (SCE opening brief, p. 5, emphasis in original, footnote omitted.)

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) argue:

"SDG&E and SoCalGas do not propose to impose opt-out fees solely on individuals with disabilities or other covered medical conditions. Instead, we propose to impose the opt-out fee on all customers regardless of their disability status." (SDG&E and SoCalGas opening brief, p. 7.)

The utilities overlook historical and common sense interpretations of ratemaking situations that involve discrimination. As it has done in the past, the Commission should now review whether or not the utilities charge or will charge the same rates to customers that are "similarly situated." In plain English, "similarly situated" means:

"Alike in all relevant ways for purposes of a particular decision or issue. The term is often used in discrimination cases, in which the plaintiff may seek to show that he or she was treated differently from others who are similarly situated except for the alleged basis of discrimination." (www.nolo.com/dictionary/)

The Public Utilities Code does not often use the term “similarly situated” (Code §2827(e)(1) regarding net energy metering is an exception) but the Commission has previously relied on the concept. (Personal recollection; Aglet does not have legal research tools.)

It should be clear to the Commission that customers with medical conditions related to RF emissions and customers without such conditions are not similarly situated. Customers with medical conditions are forced to endure adverse consequences of smart meters or pay opt out charges to avoid those consequences. On the other hand, customers without medical conditions can accept smart meters and avoid both adverse consequences and opt out charges. Customers with medical conditions are worse off. (See opening brief of Southern Californians for Wired Solutions to Smart Meters, p. 18.)

The Center for Appropriate Technology (CforAT) explains that the legality of opt out charges for customers that merely prefer an analog meter is not at issue. However, to the extent that a customer can show that reliance on an analog meter is a medical necessity due to a disability, then the ADA and supporting regulations require that Commission orders that authorize charges for opt out service must be rescinded. (CforAT opening brief, pp. 6, 15-16.) Aglet agrees.

3. Recommendations

Aglet recommends that the Commission issue this finding of fact:

Customers who opt out of smart meter service for medical or health reasons, and those who opt out for other reasons, are not similarly situated.

Aglet recommends that the Commission issue this conclusion of law:

Imposition of utility charges for customers who opt out of smart meter service for medical or health reasons is contrary to the ADA and Public Utilities Code §453.

The Commission should promptly review standards of proof and tariff provisions for customer eligibility for opt out service without charge. Unless the

Commission decides to rescind opt out charges for all customers, it will be necessary to determine which customers have valid medical or health disabilities that exempt them from opt out charges. These are questions of fact anticipated in Code §453(e).

The Commission has resisted addressing the health impacts of RF emissions, but affected customers have not quietly gone away. It is time for the Commission to carry out its duty to ensure safe utility service.

It is not clear to Aglet that opt out service in the absence of medical or health issues is necessary. There is no evidence that such service would benefit customers in any substantive way. The Commission should consider limiting opt out service to customers with medical or health conditions.

4. Alleged Costs of Service

PG&E's makes the following unsupported statements:

"Customers who have wireless SmartMeters pay rates based on the lower costs to serve them due to remote rather than manual meter reading; customers with analog meters pay rates and fees that are based on the incremental costs to serve them, including somewhat higher costs due to the need to manually read their meters rather than remotely read them." (PG&E opening brief, p. 6.)

There is no evidence to support these claims. The notion that smart meter costs are lower than analog meter costs is untested. Operating expenses for smart meters might be lower than for analog meters, due to avoided costs of meter reading, but even that comparison is unsupported by recent evidence and does not consider information processing costs. The limited record in this proceeding suggests that the capital-related costs of smart meters are substantially higher than capital-related costs of analog meters. (Decision (D.) 12-02-014, Table 2 at p. 25, shows analog meter capital cost of \$51.24; in comments on the proposed decision that preceded D.12-02-014, filed December 12, 2001, at p. 4, Aglet estimated smart meter capital cost of \$200.) Long ago the Commission justified smart

meters after forecasting that smart meters would have a slender cost effectiveness advantage over analog meters. Aglet would welcome an updating of those cost effectiveness studies, to test whether the promised benefits of smart meters are actually occurring.

PG&E's claim that opt out rates are based on incremental costs is wrong. Current opt out charges (\$75 fee, plus \$10 per month) are based on Commission judgment, not evidence or any announced theory of incremental cost ratemaking. There has never been an evidentiary hearing in this proceeding. Utility showings of the costs of opt out service are untested. Phase 2 hearings are meant to address utility costs of opt out service.

The Commission should disregard PG&E's brief on these issues.

5. Conclusion

The Commission should find that customers who opt out for medical or health reasons, and those who opt out for other reasons, are not similarly situated.

The Commission should conclude that imposition of utility charges for customers who opt out for medical or health reasons is contrary to the ADA and Public Utilities Code §453.

The Commission should promptly review standards of proof and tariff provisions for customer eligibility for opt out service without charge.

* * *

Dated July 21, 2012, at Novato, California.

/s/

James Weil, Director
Aglet Consumer Alliance
PO Box 866
Novato, CA 94948
Tel (415) 895-5296
jweil@aglet.org