

Decision _____



FILED

04-09-12

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of the Pacific Gas & 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)
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INTERVENOR COMPENSATION CLAIM OF EON – the Ecological Options Network
AND DECISION ON INTERVENOR COMPENSATION CLAIM OF EON – the Ecological Options Network

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Claimants: EON – Ecological Options Network	For contribution to D. 12-02-014
Claimed (\$): 40,700.00	Awarded (\$):
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Amy Yip-Kikugawa
I hereby certify that the information I have set forth in Parts I, II, and III of this Claim is true to my best knowledge, information and belief. I further certify that, in conformance with the Rules of Practice and Procedure, this Claim has been served this day upon all required persons (as set forth in the Certificate of Service attached as Attachment 1).	
Signature: /s/	
Date: April 9, 2012	Printed Name: Mary Beth Brangan

PART I: PROCEDURAL ISSUES (to be completed by Claimant except where indicated)

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A. Brief Description of Decision:	This decision modifies Pacific Gas and Electric Company’s (PG&E) SmartMeter Program to include 1) an opt-out option for residential customers of analog gas and electric meters, 2) continuation of the proceeding to phase two to discuss community-wide opt-out and 3) to further consider cost and cost allocation issues in phase two.
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

		Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):			
4	1. Date of Prehearing Conference:	5/6/2011	
	2. Other Specified Date for NOI:		
	3. Date NOI Filed:	6/06/2011	
	4. Was the NOI timely filed? Yes		
Showing of customer or customer-related status (§ 1802(b)):			
5	5. Based on ALJ ruling issued in proceeding number:	A.11-03-014	
	6. Date of ALJ ruling:	Oct. 25, 2011	
	7. Based on another CPUC determination (specify):		
	8. Has the Claimant demonstrated customer or customer-related status? Yes Category 3		
Showing of "significant financial hardship" (§ 1802(g)):			
6	9. Based on ALJ ruling issued in proceeding number:	A.11-03-014	
	10. Date of ALJ ruling:	Oct. 25, 2011	
	11. Based on another CPUC determination (specify):		
	12. Has the Claimant demonstrated significant financial hardship? Yes.		
Timely request for compensation (§ 1804(c)):			
7	13. Identify Final Decision:	D. 12-02-014	
	14. Date of Issuance of Final Order or Decision:	2/9/2012	
	15. File date of compensation request:	4/9/2012	
	16. Was the request for compensation timely? Yes		

C. Additional Comments on Part I (use line reference # as appropriate):

8	#	Claimant	CPUC	Comment

PART II: SUBSTANTIAL CONTRIBUTION (to be completed by Claimant except where indicated)

A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059). (For each contribution, support with specific reference to the record.)

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Contribution	Specific References to Claimant’s Presentations and to Decision	Showing Accepted by CPUC
<p>EON contributed efficiently to this proceeding in representing the interests, complaints and concerns of our diverse ratepayer constituents in relation to the reasonableness of PG&E’s proposed radio off opt out plan and its costs.</p> <p>EON provided the Commission with specific facts to integrate into the Commission’s policy-making process that clarified the problems from the point of view of customers wanting a choice of meters but not wanting the radio-off option. EON explained the RF/EMI issues causing thousands of PG&E customers to refuse the radio-off option, why the radio-off option wouldn’t solve their problems and why customers wanted to have their ‘smart meter’ removed and replaced with an analog or to retain their analog meters.</p> <p>Both DRA and TURN supported the radio off option and therefore, did not support the needs of these customers.</p> <p>EON consistently advocated for three of the main elements of the final interim decision: (1) retention of analog meters; (2) continuation of the proceeding for the purpose of considering additional pricing considerations as well as (3) consideration of community-wide opt-out.</p> <p>EON prevailed on all three of these issues.</p>	<p>EON participated in the proceeding with the following activities: EON Protest, April 25, 2011; Pre-hearing Conference, May 6, 2011; Pre-hearing Conference, July 27; CPUC Workshop, Sept. 14, 2011; EON Comments on PD, Dec. 12, 2011.</p> <p>EON’s participation noted: D.12-02-014, p. 4, timely protests filed; pg. 36, Comments filed Dec. 12, 2011, pg. 36, para. 1.</p> <p>EON’s input as an intervening party was repeatedly referenced in Decision 12-02-014 in both the body of the text (6 times) and in the footnotes comprising the decision (4 times). See D.12-02-014, pages 4, 10, 11, 14, 20, 28, 30, 36-38.</p> <p>The scope of the opt-out proceeding was whether PG&E’s proposed radio off option was reasonable and whether the proposed costs and recovery were reasonable.</p>	
<p>Participation in the portion of this proceeding covered by this request met the requirements as defined in Section 1802(i) of the PU Code for establishing a substantial contribution to the</p>		

<p>Commission’s decision.</p> <p>The Commission has elaborated on this statutory standard as follows: “A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. Or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision, even if the Commission does not adopt a party's position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected. (D.99-08-006, 1999 Cal. PUC LEXIS 497, *3-4).”</p> <p>With this guidance in mind, we turn to the claimed contributions EON made to Decision 12-02-014</p>		
<p>1. Opt -out option: Together with other parties, EON recommended that analog meters be retained and the Commission adopted an analog opt-out in this decision. EON’s recommendation was taken.</p> <p>EON Protest, April 25, 2011, pp. 3, 13, 14, 15 EON Comments, Dec. 12, 2011, pp 3, 11.</p>	<p>In his final Decision 12-02-014, Commissioner Peevey noted [pp. 19-20], “The proposed decision also did not find the analog meter option reasonable.... In light of parties’ comments on the proposed decision, however, we revise the proposed decision and now adopt an analog meter opt-out option.”</p> <p>Also see Decision 12-02-014 p. 10, para. 1, footnote 12 and 13</p>	
<p>2. Timing of opt out decision: EON pointed out that customers do not have to decide until January 1, 2014, whether or not to opt out of time variant pricing. Pub. Util. Code § 745 (d); EON Comments, Dec. 12, 2011, pp 4,5,6,7</p>	<p>D.12-02-014 p. 20 “At a minimum, this opt-out option should be re-evaluated once default TOU pricing is employed for all residential customers.”</p>	
<p>3. Extension of Proceeding: Contrary to the PD declaring a stop to the proceeding, EON recommended that the Commission continue the proceeding, for among other reasons, to discuss a Community Opt Out option. EON Comments, Dec. 12, 2011, pp 10, 11</p>	<p>D.12-02-014 p. 21 para. 1, “Consequently, we find that further consideration of whether to allow a community opt-out option should be included in the <i>second phase of this proceeding.</i>” (italics added)</p>	

<p>4. Radio-off option: PG&E proposed a radio-off option to customers rejecting ‘smart’ meters. EON stated that a radio-off option didn’t solve the problems. The radio-off proposal was rejected by the Commission. EON’s recommendation was taken.</p> <p>EON Protest, April 25, 2011, p 13 EON Comments, Dec. 12, 2011, pp 8, 11</p>	<p>D.12-02-12 p 10, para 1; and p. 20, para. 1: “In light of parties’ comments on the proposed decision, however, we revise the proposed decision and now adopt an analog meter opt-out option.”</p>	
<p>5. RF Emissions: EON contributed by explaining, in contrast to PG&E’s contention that RF emission was minimal and only 45 seconds per day, that the RF from the transmission of electrical usage data was not the only source of RF in ‘smart’ meters, and that other sources were the digital clock, the power supply (or SMPS) and the mesh network itself, emitting almost constant 24/7 millisecond bursts from both individual and neighboring meters. (All these sources are measurable.) This more accurately depicts the density and intensity of radiation exposure to the public and why thousands have complained and did not want the radio-off option.</p> <p>EON Protest, pp 11,12,13 EON Comments, pp 8, 9</p>	<p>D.12-02-12, pg.11, (4.2) footnote 19 In her October 18, 2011 Administrative Law Judge’s Ruling Seeking Clarification, ALJ Amy Yip-Kikugawa focused on obtaining information from the utilities as to the frequency, duration and sources of RF emissions. This information was then submitted to the Judge by the IOUs in specific detail, admitting <i>the almost constant</i> millisecond bursts complained about by the public, showing a range of between 10,000 and 190,000 emissions per day. Though because the emissions were in millisecond bursts, they totaled, if added up, between 45 seconds and 15 minutes per day.</p>	
<p>6. SMPS: A unique contribution in our filings, on the basis of extensive research and consultations with electrical engineering experts was: (A) that RF antennas are not the only source of electromagnetic emissions from wireless ‘smartmeters;’ (B) that the Switching Mode Power Supply [SMPS] or power supply, component in wireless meters is widely known to cause high frequency transient spikes, or ‘dirty electricity’ in the household and local neighborhood circuitry; and (C) that the proposed ‘radio off’ option would not eliminate this RF emission source, but would still have it.</p> <p>This information was necessary to understand why ratepayers rejected the</p>	<p>In her October 18, 2011 Administrative Law Judge’s Ruling Seeking Clarification, ALJ Amy Yip-Kikugawa included among her questions, “Is there RF emission when the meter is not transmitting?” In their response, PG&E acknowledged that SmartMeters, “like all digital circuitry” emit RF in addition to their wireless transmission functions. While PG&E did not refer to it directly by name, SDG&E did, explaining “processor clock signals and power supplies” as “types of unintentional RF signals...” And “The unintentional RF signals from the meter’s solid state electronics will remain virtually unchanged with the radio turned off or removed.”</p> <p>So the existence and RF emissions of the</p>	

radio-off option.	<p>SMPS function was confirmed by both PG&E and SDG&E in their responses to ALJ Yip- Kikugawa’s “Ruling Seeking Clarification” issued Oct. 18, 2011.</p> <p>[see PG&E Response #9, page 13 and SDG&E Responses #9 and #10, page 10]</p> <p>Though PG&E contends that these emissions are within FCC limits, it is reasonable to assume that our extensive research and documentation of this information was a factor in Judge Yip-Kikugawa eliciting this extremely relevant information from PG&E for the proceeding.</p>	
<p>7.Wattage of ‘Smart’ meters: EON contributed information that showed PG&E ‘smart’ meters operated at more than 2 watts, in contrast to PG&E’s contention of only 1 watt. This elicited a response from PG&E that it was indeed, an EIRP of 2.5 watts. EON Protest, p. 12, para. 1</p>	<p>D.12-02-014: p. 14, para. 1, footnote 25, & 26</p> <p>Again, though PG&E minimized its importance, and Commissioner Peevey used an analogy to discount it, the fact remains that EON’s information forced PG&E to admit the higher power output.</p>	
<p>8.Costs: EON advised that ratepayers should not be required to pay for a solution that does not solve the problems. This recommendation, together with those of others, contributed to the decision to continue to consider allocation of costs in the second phase.</p> <p>EON Protest, p. 14</p>	<p>D.12-02-014: P. 28, para. 1, footnote 49.</p> <p>D.12-02-014: p. 30, para. 1: “Based on these comments, we believe it is appropriate to consider allocation of costs as part of the second phase of this proceeding.”</p>	
<p>9. Community Wide Opt-Out Option: . EON advocated for continuing the Proceeding to consider the issue of community-wide opt-out, which is also an element of the Final Decision.</p> <p>EON Protest, p. 15 EON Comments, pp 1,11, para. 5.</p>	<p>D.12-02-014, p.11, footnote 19; D.12-02-014, p. 21 para.1 “...Consequently, we find that further consideration of whether to allow a community opt-out option should be included in the second phase of this proceeding.”</p> <p>D.12-02-014 p.37, # 12; p. 38, # 9</p>	

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

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	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	
b. Were there other parties to the proceeding with positions similar to	Yes, in part.	

yours? Yes.		
c. If so, provide name of other parties: Depending on individual issues, other parties with similar concerns included Aglet, Wilner Associates, EMF Safety Network, Fairfax, Alameda, CCSF, Lake County and CARE.		
d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: One of the ways we communicated with DRA, TURN and the other parties was via contact at the two Pre-hearing Conferences as well as at the workshop. We also communicated with parties through numerous phone and e-mail discussions to make sure we were not duplicating efforts. There was no major overlap with DRA or TURN's points which we were aware of, our points were different in emphasis. We were complementary in our support of facts illustrating the inappropriateness of the proposed radio-off option with Fairfax and Marin County, with their focus of disputed legal process and security and privacy issues, which we agreed with and mentioned, but didn't go into detail because they did. We supplemented the issues articulated by Network of customer survey data of adverse health and safety impacts and no cost analog opt-out which we mentioned but didn't go into detail on since Network did. In addition to no cost analog opt-out, we emphasized continuing the proceeding for more discussion of costs and Community-wide opt out, and our unique focus of the RF emissions from other RF sources from digital 'smart' meters - the power supply (SMPS), digital clock and the mesh network itself.		

C. Additional Comments on Part II (use line reference # or letter as appropriate):

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#	Claimant	CPUC	Comment

PART III: REASONABLENESS OF REQUESTED COMPENSATION (to be completed by Claimant except where indicated)

A. General Claim of Reasonableness (§§ 1801 & 1806):

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a. Concise explanation as to how the cost of Claimant's participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate) As noted above, EON consistently advocated for three of the main elements of the final interim decision: (1) retention of analog meters; (2) continuation of the proceeding for the purpose of considering additional pricing considerations as well as (3) consideration of community-wide opt-out. As documented in the forgoing, EON prevailed on all three of these issues. Without an analog opt out, and the possible community wide opt out, as well as security and privacy issues being addressed, customer damage and customer rage will continue to mount and there will be many, many personal injury lawsuits. Furthermore, there surely will be less cooperation with the CPUC's stated energy policy goals. According to D.12-02-014, p. 25, Table 2, PG&E estimates opt out costs will be approximately \$60	CPUC Verified
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million. That amount might be dwarfed by legal settlements if policy changes aren't made. Therefore, our costs to advocate for these policy changes are reasonable relative to PG&E's and ratepayer's potential losses.	
<p>b. Reasonableness of Hours Claimed.</p> <p>The EON team divided our intervenor tasks; James focused on synthesizing research and writing first drafts; Mary Beth communicated and coordinated with other parties, monitored data flow and process, researched and did final edits. Therefore, we did not duplicate efforts. Considering the potential ratepayer costs and public health concerns at stake, EON's participation costs are reasonable.</p>	
<p>c. Allocation of Hours by Issue</p> <p>James Heddle: SMPS - 6% RF - .9% Opt-out - 66% Radio Off - 4% Analog - 11%</p> <p>Mary Beth Brangan: Opt-Out - 18.9% SMPS - 3.8% RF - 1.8% Radio Off - 2% Analog - 40% Community-wide - 1% Costs - 2% Extension - 6.5%</p>	

B. Specific Claim:

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CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
James Heddle	2011	81	\$200	Resolution ALJ-267	\$16,200			
Mary Beth Brangan	2011	88.05	\$200	Resolution ALJ-267	\$17,610			
Subtotal:					\$33,810	Subtotal:		
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
[Person 1]			\$					

14

15

	[Person 2]								
	Subtotal:						Subtotal:		
INTERVENOR COMPENSATION CLAIM PREPARATION **									
	Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
16	Mary Beth Brangan	2012	10.2	\$200	Resolution ALJ-267	\$2,040			
	James Heddle	2012	23	\$100	Resolution ALJ-267	\$2,300			
	Mary Beth Brangan	2012	25.5	\$100	Resolution ALJ-267	\$2,550			
	Subtotal:					\$6,890	Subtotal:		
COSTS									
17	#	Item	Detail			Amount	Amount		
	Subtotal:						Subtotal:		
	TOTAL REQUEST \$:					\$40,700	TOTAL AWARD \$:		
<p>When entering items, type over bracketed text; add additional rows as necessary. *If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale. **Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>									

C. Attachments Documenting Specific Claim and Comments on Part III (Claimant completes; attachments not attached to final Decision):

18	Attachment or Comment #	Description/Comment
	1	Certificate of Service
	2	Service List
	3	Time Records of Mary Beth Brangan and James Heddle
	4	Resume

D. CPUC Disallowances, Adjustments, and Comments (CPUC completes):

19	#	Reason

PART IV: OPPOSITIONS AND COMMENTS
 Within 30 days after service of this Claim, Commission Staff
 or any other party may file a response to the Claim (*see* § 1804(c))

(CPUC completes the remainder of this form)

A. Opposition: Did any party oppose the Claim?	
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If so:

Party	Reason for Opposition	CPUC Disposition

B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(2)(6))?	
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If not:

Party	Comment	CPUC Disposition

FINDINGS OF FACT

1. Claimant [has/has not] made a substantial contribution to Decision (D.) _____.
2. The requested hourly rates for Claimant’s representatives [,as adjusted herein,] are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses [,as adjusted herein,] are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$_____.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, [satisfies/fails to satisfy] all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$ _____.
2. Within 30 days of the effective date of this decision, _____ shall pay Claimant the total award. [for multiple utilities: “Within 30 days of the effective date of this decision, ^, ^, and ^ shall pay Claimant their respective shares of the award, based on their California-jurisdictional [industry type, for example, electric] revenues for the ^ calendar year, to reflect the year in which the proceeding was primarily litigated.”] Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning _____, 200__, the 75th day after the filing of Claimant’s request, and continuing until full payment is made.
3. The comment period for today’s decision [is/is not] waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.