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

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications. (U39M).

Application No. 11-03-014
(Filed March 24, 2011)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U39M) RESPONSE TO
APPLICATION FOR REHEARING OF DECISION 12-02-014**

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Dated: March 26, 2012

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Pursuant to Rule 16.1(d) of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) hereby responds to the Application for Rehearing of Decision 12-02-014 (Decision) filed by Wilner & Associates on March 9, 2012 (Wilner & Associates Rehearing Request).

The Wilner & Associates Rehearing Request identifies no legal errors that are within the scope of the Decision or the underlying proceeding, and therefore should be rejected. Notably, the Wilner & Associates Rehearing Request expressly concedes that the SmartMeter™ "Opt-Out Program" authorized by the Decision "is a step in the right direction that will alleviate many of the concerns that have surfaced" and that a "positive aspect of the decision is that PG&E's customers can opt out (choose analog meters instead of SmartMeters) for any reason. Whether it is a matter of health, privacy, safety, or security, PG&E's customers now have a choice – which was one of Wilner's main objectives in this proceeding." (Wilner & Associates Rehearing Request, p. 3.)

Nonetheless, Wilner & Associates allege legal error on several grounds, including (1) the Decision erroneously failed to make findings or hold hearings on the health effects of PG&E's SmartMeters™ and Home Area Network and erroneously referenced an earlier Commission decision on the compliance of PG&E's SmartMeters™ with FCC requirements; (2) the Decision erroneously failed to consider whether customers with "electromagnetic sensitivity" should be

exempt from paying any costs to opt-out of the SmartMeter™ Program; and (3) the Decision erroneously created “uncertainty” concerning whether the SmartMeter™ Opt-Out Program will be available to customers in the future. (Wilner & Associates Rehearing Request, pp. 3-8.)

None of the legal “errors” alleged by Wilner & Associates are within the scope of the Decision or underlying proceeding, and therefore the rehearing request should be rejected.

First, as the Decision makes clear and Wilner & Associates appear to concede, the alleged health effects of radio frequency (RF) emissions from SmartMeters™ are outside the scope of the Decision and proceeding and immaterial to the Decision, because the Decision provides PG&E customers with the option to choose analog meters with no RF emissions for any reason and without regard to any alleged health effects of SmartMeters™. (Decision, pp. 15-16.)¹ The Commission held open and public proceedings on SmartMeter™ opt-out issues, including prehearing conferences, a public workshop, and several opportunities for public comment. (Decision, pp. 3- 5.). Not only did Wilner & Associates have a full opportunity to participate in these public proceedings and to provide oral and written comments, it did participate. The result was the Decision, which, by adopting the non-RF emitting analog meter option, fully moots the health effects issues raised by Wilner & Associates. There is no legal error in the Decision’s treatment of alleged health effects issues raised by Wilner & Associates.²

Second, Wilner & Associates allege that the Decision unlawfully discriminates against customers with “electromagnetic sensitivity” by requiring them to pay the same charges for service with a non-RF emitting analog meter as all other customers. (Wilner & Associates

¹ Wilner & Associates’ reference to the Home Area Network (HAN) program being implemented by PG&E for up to 5,000 customers is likewise irrelevant, because the HAN program, like the Opt-Out Program, is purely voluntary and therefore no PG&E customer will be required to participate in the HAN program.

² Wilner & Associates allege that because rehearing is still pending on a prior Commission decision (D.10-12-001) that concluded that SmartMeter™ RF emissions complied with FCC requirements, this Decision unlawfully referenced that decision. (Wilner & Associates Rehearing Request, pp. 3- 4.) The reference to the prior decision is not unlawful because the prior decision is still effective and has not been stayed or overturned. In addition, under Public Utilities Code Section 1709, D.10-12-001 is a final decision and therefore its findings and conclusions are binding on the parties and Commission in this proceeding. Wilner & Associates also allege the Decision violates Public Utilities Code Section 1710 because the Commission allowed submittal of information from parties, including PG&E, on RF emissions. (Wilner & Associates Rehearing Request, p. 4.) There is no legal error under Section 1710, because the technical information was not material to, or within the scope of, the Decision.

Rehearing Request, p.6.) By definition, there is no “discrimination” in the Decision’s adopted charges for the Opt-Out Program; all customers, regardless of medical or other conditions, are charged the same rates. Moreover, the charges adopted by the Decision are interim and subject to further Commission review in Phase 2 of the proceeding. (Decision, p.32.) There is no legal error in the Decision.

Third, Wilner & Associates allege that the Decision unlawfully raises the possibility that the Commission may modify or terminate the Opt-Out Program at a subsequent date. (Wilner & Associates Rehearing Request, p. 7.) There is no uncertainty in the availability of the Opt-Out Program under the Decision; the Decision’s ordering paragraphs require that PG&E offer the program and PG&E’s tariffs currently make the program fully available. Under the Public Utilities Code, the Commission retains the statutory discretion to re-evaluate and modify its decisions in the future, based on changed circumstances or a consideration of reasonableness. (Public Utilities Code Sections 728, 1708.) If the Commission chooses to re-open the proceeding or modify the Opt-Out Program, Wilner & Associates and other interested parties and PG&E customers will have notice and a full opportunity to comment and participate. There is no legal error in the Decision’s reference to the ability of the Commission to revise or modify the Opt-Out Program in the future.

The Wilner & Associates Rehearing Request raises no errors of law and therefore should be rejected.

Respectfully Submitted,
CHRISTOPHER J. WARNER

By: _____ /s/
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