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

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING VARIOUS MOTIONS**

This Administrative Law Judge's Ruling (Ruling) addresses various motions filed in Application (A.) 11-03-014.

Wilner and Associates' May 3 and May 4, 2011 Motions

On May 3, 2011, Wilner and Associates (Wilner) filed *Motion to Require PG&E to Conduct SmartMeter Health Study and Attached Proposed Administrative Law Judge Ruling (Wilner May 3 Motion)*. This motion requests that Pacific Gas and Electric Company (PG&E) be ordered to conduct a SmartMeter health study. Wilner states that the purpose of the study is to "determine if disconnecting the radio transmitter in the SmartMeter will provide relief to customers that get sick when a SmartMeter is installed on their property."¹ Wilner believes that such a study is necessary before the Commission may consider any SmartMeter opt-out proposal. On May 4, 2011, Wilner filed *Motion to Require DRA to Oversee the PG&E SmartMeter Health Study Proposed by Wilner & Associates (Wilner May 4*

¹ *Wilner May 3 Motion* at 1.

Motion), requesting that the Commission's Division of Ratepayer Advocates (DRA) oversee the SmartMeter health study requested in the *Wilner May 3 Motion*. Wilner believes that DRA's Electricity Pricing and Customer Programs Branch has the capability to supervise the study in a fair and impartial manner. Thus, it asserts DRA's supervision would be in the public interest.²

The *Wilner May 3 Motion* proposes to evaluate whether one possible opt-out option will address one concern expressed by customers who do not wish to have a wireless SmartMeter installed at their location. The questions posed in the "PG&E SmartMeter Health Questionnaire" seek opinions from a limited number of PG&E customers. The opinions sought have already been expressed by numerous speakers during the Public Comment period of Commission meetings. I believe that requiring PG&E to conduct the proposed survey would only incur additional costs while providing no additional information necessary to resolve this proceeding. Based on these considerations, the *Wilner May 3 Motion* and the *Wilner May 4 Motion* are denied.

Wilner's May 5, 2011 Motion

On May 5, 2011, Wilner filed *Motion to Amend Protest (Wilner May 5 Motion)*. In this motion, Wilner seeks to amend its protest to oppose PG&E's request that this proceeding be categorized as ratesetting. Wilner believes that the categorization should be quasi-legislative. The *Wilner May 5 Motion* was filed after PG&E had filed its response to protests and challenges PG&E's response to the protests. Therefore, it should not be considered an amendment to a protest,

² *Wilner May 4 Motion* at 1-2.

but rather a reply to PG&E's response. As such, the *Wilner May 5 Motion* is denied.

Californians for Renewable Energy, Inc.'s May 8, 2011 Motion

On May 8, 2011, Californians for Renewable Energy, Inc. (CARE) filed a motion requesting that the Commission: (1) admit certain correspondence into the record; and (2) admonish PG&E for knowingly providing false information to the Commission. PG&E filed its opposition to the motion on May 24, 2011.

CARE states that PG&E's response to protests states that the Federal Communications Commission (FCC) has exclusive jurisdiction to regulate radio frequency (RF) emissions and to establish RF emissions standards. CARE asserts that PG&E's response is knowingly false, as CARE had provided notice that the jurisdiction lies with the Commission.³ CARE offers as support a link to a document that it filed in Application (A.) 10-09-012. This document is a letter from the FCC regarding an amended complaint filed by CARE. PG&E's opposition states that the issue raised in this motion – whether the FCC's dismissal of CARE's complaint means that the Commission has jurisdiction to regulate RF emissions and to set RF emissions standards – was raised by CARE in A.10-09-012. Therefore, PG&E asserts that CARE is improperly attempting to move issues from A.10-09-012 into this proceeding.⁴

The FCC's letter to CARE was included as an attachment to CARE's response to protests. The disputed issue of the effect of the FCC's letter has been

³ *Californians for Renewable Energy, Inc. (CARE) Motion for Acceptance for Filing (CARE May 8 Motion)*, filed May 8, 2011, at 2-3.

⁴ *Pacific Gas and Electric Company's Opposition to Californians for Renewable Energy Inc.'s Motion for Acceptance for Filing*, filed May 24, 2011, at 3.

raised in A.10-09-012 and should be considered and addressed in that proceeding, not here. Since the Commission has not yet resolved this issue, I do not find the statements made in PG&E's response to protests regarding jurisdiction over RF emissions to be knowingly false.

CARE also alleges that PG&E knowingly provided false information at the May 6, 2011 prehearing conference (PHC) when it stated that the local ordinances establishing moratoriums on SmartMeter deployment have no legal effect. CARE asserts that PG&E made these statements even after CARE had informed PG&E that local governments have the jurisdiction to enforce the building codes, and local building inspectors have jurisdiction to tag any meters that are not certified by Underwriters Laboratories Inc. (UL), including SmartMeters. CARE offers as support a letter by an engineer with UL.

The Commission, not local jurisdictions, has authority over a public utility's infrastructure. In Decision (D.) 05-09-044 and D.06-07-027, the Commission authorized PG&E's Advanced Metering Infrastructure (AMI), which included deployment of smart meters. As discussed in D.12-02-014, deployment of smart meters is an integral part of California's energy policies, such as net energy metering, demand response and energy efficiency measures. The letter from UL does not support CARE's assertions, but rather notes that National Electric Code standards and UL certification apply only to equipment past the meter. Therefore, PG&E's statements at the May 6, 2011 PHC were not false.

For the reasons stated above, the *CARE May 8 Motion* is denied.

Wilner's June 3, 2011 Motion

On June 3, 2011, Wilner filed *Motion to Take Judicial Notice and Make Certain Documents Part of the Record (Wilner June 3 Motion)*. Wilner seeks to have three documents made part of the record:

1. World Health Organization Press Release, dated May 31, 2011;
2. Maine Public Utilities Commission Order in Docket No. 2010-345;

and

3. Nine letters sent to the ALJ.

The motion fails to explain the significance of the documents or how they are relevant to resolving disputed issues in this proceeding.

The first document relates to issues outside the scope of this proceeding. Therefore, this document shall not be made part of the record. The second document relates to an order by the Maine Commission. While the Maine Commission's order addresses whether one of the utilities under its jurisdiction should adopt a smart meter opt-out option, the outcome is not binding to this Commission. Accordingly, I do not find that it needs to be made part of the record. The third document (the letters) are already part of the record of this proceeding, as they are in the Correspondence File for this proceeding.

Based on the above, the *Wilner June 3 Motion* is denied.

Wilner's June 9, 2011 Motion

On June 9, 2011, Wilner filed *Wilner & Associates' Motion to Require PG&E to Include an Analog Meter Option as Part of Its SmartMeter Opt-Out Proposal (Wilner June 9 Motion)*. PG&E filed its opposition to the motion on June 23, 2011.

The *Wilner June 9 Motion* seeks to have PG&E include more than just a radio-out option in its opt-out proposal and recommends the costs to provide such an option. However, the Scoping Ruling of the Assigned Commissioner

(Scoping Ruling), issued on May 25, 2011, stated that other parties could offer opt-out options. Therefore, if Wilner wishes to have the Commission consider an analog meter opt-out option, it could provide that on its own, rather than require PG&E to do so. For that reason alone, the *Wilner June 9 Motion* should be denied.

Moreover, events occurring after the filing of the motion have now rendered the *Wilner June 9 Motion* moot. These include a workshop held on September 14, 2011 to discuss all opt-out options proposed by parties and an ALJ Ruling issued on October 12, 2011, directing PG&E to provide cost information associated with offering an analog meter opt-out option, a radio-out opt-out option and a wired meter opt-out option.⁵

Accordingly, the *Wilner June 9 Motion* is denied.

Aglet Consumer Alliance's July 7, 2011 Motion

On July 7, 2011, Aglet Consumer Alliance (Aglet) filed *Motion of Aglet Consumer Alliance to Strike Portions of PG&E Testimony (Aglet Motion)*. Aglet seeks to strike the following statements from PG&E's Prepared Testimony:

1. PG&E remains fully committed to SmartMeter™ technology as a positive change for customers. (Testimony Chapter 1 at 1-4:12-13);
2. Rather than manually read its customers' 10 million meters once per month, PG&E now can obtain hourly and quarter-hourly interval reads of customers' energy usage to provide them with substantially more information about practices they previously could monitor and adjust only monthly. (Testimony Chapter 1 at 1-4:17-20);

⁵ *Administrative Law Judge's Ruling Directing Pacific Gas and Electric Company to File Additional Cost Information*, issued October 12, 2011.

3. In short, SmartMeters™ are a critical tool in California's energy future. (Testimony Chapter 1 at 1-4:28); and
4. The issue before the Commission – how to balance the enormous benefits that SmartMeters™ and the Smart Grid offer while addressing the concerns of those customers who have an aversion to RF-based devices – is significant. (Testimony Chapter 1 at 1-11:1-4).

Aglet maintains that this testimony should be struck because PG&E has objected to discovery questions on the grounds that they are “not relevant to and beyond the scope of the application.”⁶ PG&E filed its opposition to the motion. It notes that Aglet's discovery questions do not relate to the issue of whether to approve PG&E's proposed opt-out option, but rather “focus on the benefits of SmartMeter technology and whether SmartMeter technology should be deployed.”⁷

Upon review of the discovery questions, I agree with PG&E that Aglet's questions regarding these statements exceed the scope of this proceeding. Moreover, Aglet's questions concerning the benefits of Smart Grid appear to challenge prior Commission determinations approving PG&E's Advanced Metering Infrastructure Program. Such a challenge constitutes a collateral attack on final Commission decisions and is prohibited under Pub. Util. Code § 1709. Accordingly, the *Aglet Motion* is denied.

⁶ *Aglet Motion* at 1.

⁷ *Pacific Gas and Electric Company's Opposition to Aglet Consumer Alliance's Motion to Strike Portions of PG&E's Testimony*, filed July 22, 2011, at 2.

Division of Ratepayer Advocates' July 22, 2011 Motion

On July 22, 2011, DRA filed *Motion of the Division of Ratepayer Advocates to Amend the Scope of the Proceeding to Include Data on Radio Frequency Emissions and to Order PG&E to Serve Supplemental Testimony on the Costs of an Analog Meter Option (DRA Motion)*. PG&E filed an opposition to the *DRA Motion*. Wilner and The Utility Reform Network (TURN) filed responses in support of the motion.

The *DRA Motion* first requests that the scope of the proceeding be expanded to investigate whether PG&E's SmartMeters are installed and operated in compliance with FCC guidelines for exposure to radio frequency emissions. DRA states that this issue must be considered because PG&E has made certain claims about SmartMeter RF emissions, but has not provided any documentation or data to support these claims. DRA believes that expanding the scope to include this issue would "help[]customers feel more confident that PG&E's wireless SmartMeters are safe."⁸ TURN supports expanding the scope, stating that information obtained from an investigation could impact the costs associated with a radio-off opt-out option and assist in determining the best opt-out alternative.⁹

The issue in this proceeding is to consider whether to offer an option for customers who do not wish to have a wireless SmartMeter installed at their location and, if so, the option to be offered. Such a determination was made in D.12-02-014. As discussed in D.12-02-014, while there are many reasons why a customer may not wish to have a wireless SmartMeter, customers should be

⁸ *DRA Motion* at 9.

⁹ *Response of the Utility Reform Network in Support of DRA Motion to Amend the Scope*, filed August 8, 2011, at 1-2.

allowed to opt-out for any reason, or for no reason at all. Further, the Commission's determination of which opt-out option should be offered did not consider one specific factor, but balanced the concerns expressed by customers against California's overall energy policy. DRA's request to include investigation of whether PG&E's installation of SmartMeters comply with FCC guidelines is outside the scope of this proceeding. Accordingly, DRA's request to expand the scope of this proceeding is denied.

The *DRA Motion* next requests that PG&E be directed to submit initial testimony estimating the costs of an analog meter opt-out option. As discussed above, PG&E has provided cost information associated with offering an analog meter opt-out option pursuant to an ALJ Ruling. Further, pursuant to D.12-02-014, there shall be a separate phase in this proceeding to consider costs and cost allocation associated with an analog meter opt-out option. Accordingly, DRA's request is now moot.

For the reasons stated above, the *DRA Motion* is denied.

Wilner's August 23, 2011 Motions

On August 23, 2011, Wilner filed two motions. The first motion, *Wilner & Associate's Motion to Take Judicial Notice of Workshop Document and Make It Part of the Record*, requests that the ALJ take official notice of Wilner's detailed analog meter opt-out proposal, which had been served on all parties prior to the September 20, 2011 workshop, and make it part of the record. The motion appears to argue that a document is not part of the record unless it is filed with the Commission's Docket Office. Wilner is incorrect. The Commission does not require that every document in the administrative record of a proceeding be filed. Moreover, the official record of a proceeding is the hard copy located in Central Files, not the on-line docket card. Accordingly, the motion is denied.

The second motion, *Wilner & Associates' Motion for Rulings on Outstanding Motions*, requests that the ALJ rule on all outstanding motions previously filed by Wilner. Since this Ruling resolves all of Wilner's outstanding motions, the motion is moot.

**Alameda County Residents Concerned About Smart Meters'
September 20, 2011 Motion**

On September 20, 2011, Alameda County Residents Concerned About Smart Meters (ACRCASM) filed *Motion by Alameda County Residents Concerned About Smart Meters to Dismiss PG&E's Proposal for an Opt-Out Option (A.11-03-014) and Halt the SmartMeter Program Pending Renovated Legitimacy (ACRCASM Motion)*. The motion contends that PG&E's AMI Program, which was authorized by the Commission in D.06-07-027 and D.09-03-026, are not legitimate because the Commission does not have jurisdiction to make SmartMeters mandatory. Therefore, ACRCASM asserts that PG&E's AMI Program, as well as San Diego Gas & Electric Company's (SDG&E) Southern California Edison Company's (SCE) AMI Programs, must be halted pending further review of their lawfulness. ACRCASM also seeks hearings on the health effects of SmartMeters on the public. PG&E filed a timely opposition to the motion, noting that the arguments raised in the motion are both outside the scope of this proceeding and at issue in a separate proceeding (A.11-07-009). ACRCASM was allowed to file a reply to PG&E's opposition.

The arguments raised in the *ACRCASM Motion* are the same ones raised in A.11-07-009. While ACRCASM attempts to distinguish these arguments in its reply to PG&E's opposition, the fact remains that both the motion and A.11-07-009 question the Commission's authority to approve PG&E's AMI Program and the deployment of SmartMeters. Thus, the motion is improper, as

it seeks to resolve issues pending in a separate proceeding. Further, by seeking a stay of the AMI Program through a motion, ACRCASM is challenging the determinations made in D.06-07-027 and D.09-03-026. These decisions are final and a collateral attack is prohibited under Pub. Util. § 1709. Finally, the health effects of SmartMeters is outside the scope of this proceeding.

For the reasons stated above, the *ACRCASM Motion* is denied.

Wilner's October 4, 2011 Motion

On October 4, 2011, Wilner filed *Wilner & Associates' Emergency Motion to Require PG&E to Retain Analog Meters (Wilner October 4 Motion)*. The motion requests that the ALJ issue a ruling requiring PG&E to retain all electromechanical electric meters in its possession. The *Wilner October 4 Motion* believes that unless such an order is issued, analog meters will no longer be available. Wilner concludes that if this were to occur, an analog meter opt-out option would cease to be considered. PG&E filed an opposition to the motion.

The *Wilner October 4 Motion* fails to recognize that the Assigned Commissioner had issued a ruling on September 21, 2011, which required PG&E and the other investor owned utilities to maintain a delay list which would allow customers to defer installation of a SmartMeter until a decision on an opt-out option is adopted. Therefore, Wilner's concern that there will be no analog meters available in the immediate future is unfounded. In February of this year, Decision 12-02-014 ordered PG&E to offer an analog meter opt-out option. PG&E must now ensure that analog meters are available for customers who

select the option. I do not believe it is reasonable for the Commission to specify how PG&E should do this.¹⁰ Accordingly, the *Wilner October 4 Motion* is denied.

CARE's November 2, 2011 Motion

On November 2, 2011, CARE filed *Californians for Renewable Energy, Inc. (CARE) Motion for Procedural Relief (CARE November 2 Motion)*. In the motion, CARE repeats arguments raised in the *CARE May 8 Motion* and requests the following procedural relief:

1. Approval of the *DRA Motion*;
2. An order directing PG&E, SDG&E and SCE to cease deployment of wireless smart meters;
3. An order directing PG&E, SDG&E and SCE to remove wireless smart meters and replace them with analog meters if requested by a customer;
4. An order directing PG&E, SDG&E and SCE to remove wireless smart meters that are co-located and replace them with analog meters.

PG&E filed an opposition to the motion.

I find no basis to grant any of the procedural relief requested by CARE. As discussed earlier, the *DRA Motion* is denied. Therefore, the first procedural relief requested is also denied. Next, PG&E, SDG&E and SCE were all authorized to implement smart meters as part of their AMI Programs. Consequently, CARE's second procedural relief requested is, in effect, a collateral attack on the Commission decisions authorizing the AMI Programs and prohibited under

¹⁰ The Commission will, however, review whether PG&E acted prudently in its procurement of analog meters. Consistent with existing Commission practices, costs that are found to be imprudently incurred will be disallowed.

Pub. Util. § 1709. Finally, the third and fourth procedural relief requested concern issues under consideration in this proceeding. Additionally, issues concerning SDG&E and SCE's opt-out options are under consideration in A.11-03-015 and A.11-07-020. As such, CARE's third and fourth requested relief are procedurally improper.

For the reasons stated above, the *CARE November 2 Motion* is denied.

IT IS RULED that:

1. The *Motion to Require PG&E to Conduct SmartMeter Health Study and Attached Proposed Administrative Law Judge Ruling* filed by Wilner and Associates on May 3, 2011 is denied.

2. The *Motion to Require DRA to Oversee the PG&E SmartMeter Health Study Proposed by Wilner & Associates* filed by Wilner and Associates on May 4, 2011 is denied.

3. The *Motion to Amend Protest* filed by Wilner and Associates on May 5, 2011 is denied.

4. The *Californians for Renewable Energy, Inc. (CARE) Motion for Acceptance for Filing* filed on May 8, 2011 is denied.

5. The *Motion to Take Judicial Notice and Make Certain Documents Part of the Record* filed by Wilner and Associates on June 3, 2011 is denied.

6. The *Wilner & Associates' Motion to Require PG&E to Include an Analog Meter Option as Part of Its SmartMeter Opt-Out Proposal* filed on June 9, 2011 is denied.

7. The *Motion of Aglet Consumer Alliance to Strike Portions of PG&E Testimony* filed on July 7, 2011 is denied.

8. The *Motion of the Division of Ratepayer Advocates to Amend the Scope of the Proceeding to Include Data on Radio Frequency Emissions and to Order PG&E to Serve*

Supplemental Testimony on the Costs of an Analog Meter Option filed on July 22, 2011 is denied.

9. *The Wilner & Associate's Motion to Take Judicial Notice of Workshop Document and Make It Part of the Record* filed on August 23, 2011 is denied.

10. *The Wilner & Associates' Motion for Rulings on Outstanding Motions* is denied.

11. *The Motion by Alameda County Residents Concerned About Smart Meters to Dismiss PG&E's Proposal for an Opt-Out Option (A.11-03-014) and Halt the SmartMeter Program Pending Renovated Legitimacy* filed on September 20, 2011 is denied.

12. *The Wilner & Associates' Emergency Motion to Require PG&E to Retain Analog Meters* filed on October 4, 2011 is denied.

13. *The Californians for Renewable Energy, Inc. (CARE) Motion for Procedural Relief* filed on November 2, 2011 is denied.

Dated March 29, 2012, at San Francisco, California.

/s/ AMY YIP-KIKUGAWA

Amy C. Yip-Kikugawa
Administrative Law Judge