



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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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)

And Related Matters.

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

EMF SAFETY NETWORK REPLY COMMENTS ON PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE YIP-KIKUGAWA AND ALTERNATE PROPOSED DECISION OF COMMISSIONER PEEVEY IN A.11-03-014 AND RELATED MATTERS

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1. Introduction and Summary

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, EMF Safety Network (Network) submits these Reply Comments on Proposed Decision of Administrative Law Judge Yip-Kikugawa and Alternate Proposed Decision of Commissioner Peevey in A.11-03-014 and Related Matters. The due date for reply comments is Monday, November 24, 2014. Network will submit this pleading on the due date.

If approved by the Commission, the Proposed Decision (or Alternate Decision) (PDs) will require permanent fees for customers who want to retain or restore the analog meter; denies community and business opt out; denies health and safety hearings; denies applicability of federal and utility laws; and gives millions of dollars to the utilities.

In this proceeding, many environmental and civil liberty groups, cities, and counties who collectively represent millions of utility customers, called for a no cost right to retain or restore the analog meter and gave ample evidence of smart meter program failings. The Opening Comments by the Utilities and other parties who support the PD err because they: 1) fail to address substantive issues raised in this proceeding including serious smart meter health and safety impacts; 2) falsely imply customers are the cost causers of smart meter program failures, under the ruse of customer choice; and 3) fail to address violations of safety mandates, and utility and other laws.

2. Ignoring the Issues

The Utilities and other parties who support the PDs err by ignoring serious smart meter problems, and by accepting a conclusion that customers who want or require analog metering are the "cost causers". This rationale is wrong as Ecological Options Network (EON), Center for Electrosmog Prevention (CEP), and Jeromy Johnson point out:¹ *"It now appears to be the intent of both Proposed Decisions to bring the Opt-Out Proceeding to an end without ever considering any of the key motivations leading to public demands for refusing 'smart' meters in the first place. Such sleight-of-hand, bait-and-switch tactics cast into serious question the legitimacy and credibility of both PDs."* EON

¹ Page numbers noted in these Reply Comments reference parties Comments on Proposed Decisions.

p.3 “Having no discussion at all and ending the Opt-out Phase Two proceedings after a two year long suspension without reasons being given, when people are clearly stating that they are suffering and being harmed from unsafe conditions and when counties and cities wish to protect their citizens from harm and risk is unacceptable and unconscionable...” CEP p.6 Jeromy Johnson writes, *“Attempting to silence the lack of safety of wireless smart meters is unethical and immoral, and is being done because of financial interests...” Johnson p.4*

3. Favoring the Utilities

Supporting a decision that favors the Utilities and claims to be a reasonable compromise is wrong. It is not surprising that the Utilities appreciate and support conclusions of the Proposed Decision. For example, *“SDG&E would like to thank the assigned ALJ and express its support of the PD.”* p.1; *SoCalGas supports this as fair and reasonable.”* p.4; *“SCE commends ALJ Yip-Kikugawa and President Peevey’s efforts regarding the numerous complex issues surrounding the Smart Meter Opt-Out Programs.”* p. 2.

Network supports EON's Comments: *“Another erroneous assumption and implication that underlies and permeates both PDs is that those who wish to ‘opt-out for any reason or no reason’ are standing in the way of ‘smart meter’ deployment and all-encompassing ‘mesh networks’ which are ‘in everyone’s interest,’ and therefore should pay a penalty for causing the ‘problem.’ If the principle that ‘who causes the problem should pay’ were to be justly applied, it would be the Commission which mandated the SM [smart meter] roll-out and the utilities that implemented it who should bear the costs, not the ratepayers and homeowners who were never consulted and are being impacted without their informed consent.”*

4. TURN and ORA

Both The Utility Reform Network (TURN) and the Office of Ratepayer Advocates (ORA) Comments are substantially lacking of customer protections. In 2010 TURN was calling for a boycott of smart meters, and encouraging whole neighborhoods to refuse smart meters. In phase one of A.11-03-014 TURN called for 50% shareholder

participation in covering opt out costs². Now TURN recommends the Commission adopt the PD.

ORA's position on smart meters has also changed. In 2010 the ORA argued in its comments on proposed decision³ in A.10-04-018 that a motion to dismiss committed legal error, and the findings that smart meters were safe were not sufficient. They recommended some type of relief concerning smart meter deployment by conducting open public proceeding to address public concerns. Now the ORA writes, "*In general, ORA supports the PD and APD's adopted costs.*"^{p.1} They do not mention the need for CPUC accountability, or express any concern regarding the seriousness of the issues parties present. The ORA's "*statutory mission is to obtain the lowest possible rate for service consistent with reliable and safe service levels. In fulfilling this goal, ORA also advocates for customer and environmental protections*" The ORA Comments fail to protect utility customers and the environment.

Network stated to charge opt out customers fees for meter reading, when millions of smart meters are still being read by meter readers is discrimination. TURN validates meter reading as the primary cost of the opt out program. "*The record is undisputed that the primary component recovered through the ongoing monthly fees is the "operational cost" associated with meter reading.*"^{p.6}

5. Full Public Disclosure

Network supports the Comments of of Californians for Renewable Energy, Inc. (CARE) regarding the communications between PG&E and President Peevey that are under investigation. "*The PG&E e-mails show a blatant disregard for Commission procedure and the due process rights of the parties. The obvious point of PG&E's secret campaign was to advantage PG&E and circumvent the Commission's procedural rules.*"^{p.16} Network supports the comments of EON, "*The cloud of cronyism and corruptions that now hangs over the CPUC calling into serious question the credibility,*

² Network Rebuttal Testimony <http://emfsafetynetwork.org/wp-content/uploads/2012/11/REBUT-TAL-TESTIMONY-OF-SANDI-MAURER.pdf>

³ <http://docs.cpuc.ca.gov/PublishedDocs/EFILE/CM/126712.PDF> p.1-2

legitimacy and legality of its rulings, has now become the enveloping evaluative context for all CPUC proceedings.”EON p.4

Network agrees with CARE’s request on p.15 for full public disclosure: *‘the Commission should voluntarily and swiftly produce all non-public communications involving, on the one hand, PG&E representatives and, on the other hand, Commissioners and their personal advisors, the Commission’s Executive Director, Division Directors, and all other Commission decision-makers regarding this proceeding.’* Full public disclosure should include communications requested above, and information on smart meter health impacts, smart meter fires, burned out appliances and failing smart meters.

6. Legal Errors

Parties who support the PDs fail to recognize the legal errors. Network argued the PD violated several laws, including local jurisdictions have the right to pass safety laws. More than a dozen have passed laws criminalizing smart meter installation. No state or federal law forces customers to have smart meters on their home. Does the CPUC have the constitutional authority to preempt local laws? Network agrees with CEP on the risk of harm to vulnerable populations including medically ill, seniors, pregnant women, infants, children from co-located antennas in multi-housing situations, and CEP's conclusion: *“...The safety of increased exposure to any amount of RF radiation, especially when it is multiplied up into the hundreds, in some cases, must be considered....” CEP p.6*

Network supports Comments of the Center for Accessible Technology (CforAT), including, *“Because the issue of health impacts of smart meters was expressly found to be outside of the scope of this proceeding, it is a reversible error for the PD to conclude, as it purports to do, that there are no health impacts.”p.2 “The Commission may not reach a factual conclusion on an issue that it previously held was out of scope. Nor may the Commission reach legal conclusions without addressing the full extent of the legal authority that has been submitted in briefing. Finally, the Commission may not decline to*

address relevant legal arguments that have been presented by parties. The PD has erred in each of these matters, and thus contains multiple reversible errors.”CforAT p.10

Network supports the Comments of CEP and their recognition of President Peevey's contradictory rulings, (p.2-3) and reference to the Safety Policy adopted by the CPUC on July 10, 2014 on p.4. *“The PD on page 7 contradicts the statements in CPUC Decision (D.) 10-06-047 on page 2 and D.13-07-024 on page 6 that the health and safety assessments of the smart grid will be considered in the above captioned proceedings. In addition, the PD on page 7 contradicts the California Public Utilities Code section 451 (PU Code 451) requirement that the Commission find that the smart grid is necessary to promote the safety, health, comfort, and convenience of the regulated utilities’ patrons, employees, and the public.”CEP p.1*

If the Commission is creating a separate class of customer, then the Comments of parties supporting the PDs err in failing to acknowledge analog customers are entitled to credit for the cost of the smart meter program, and protected from future costs for inactivated, failed, damaged, and burned out meters. Network has asked for this credit, and Aglet Consumer Alliance (Aglet) also asks for a credit: *“The PD and the Alternate Ignore an Important Crediting Mechanism (p.8-9)”*. Network agrees with Aglet who states, *“...the real world cost effectiveness of smart meters is unproven.”* p.1

7. Conclusion

Parties who support the PD ignore substantive issues in this proceeding including legal errors. Full public disclosure on the smart meter program is warranted. The PDs should be rejected.

Dated November 24, 2014, at Sebastopol California.

/s/
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