

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

ID #11530
RESOLUTION E-4533
September 27, 2012

RESOLUTION

Resolution E-4533. Mr. Edward Hasbrouck's Request for Commission Review of Energy Division's disposition approving Pacific Gas and Electric Company (PG&E) Advice Letter 3278-G/4006-E (Electric Rate Schedule E-SOP for Residential Electric SmartMeter Opt-Out Program, and Gas Rate Schedule G-SOP for Residential Gas SmartMeter Opt-Out Program).

PROPOSED OUTCOME: This Resolution affirms Energy Division's disposition of PG&E's Advice Letter 3278-G/4006-E and approves the Advice Letter as filed.

ESTIMATED COST: None.

By Mr. Edward Hasbrouck Request for Review filed May 26, 2012, PG&E Advice Letter 3278-G/4006-E, filed February 16, 2012.

SUMMARY

In response to Mr. Edward Hasbrouck's Request for Commission Review of the Energy Division's May 15, 2012, disposition letter approving PG&E's Advice Letter (AL) 3278-G/4006-E (the Advice Letter), this Resolution affirms the disposition and approves PG&E's Advice Letter pertaining to the SmartMeter Opt-Out Program.

BACKGROUND

In D.12-02-014 (the Decision) issued February 1, 2012, the California Public Utilities Commission (CPUC or Commission) directed PG&E to file a Tier 1

Advice Letter to establish procedures to implement a smart meter opt-out option for customers who do not wish to have a wireless smart meter, and to establish a SmartMeter Opt-Out Tariff with CPUC specified opt-out fees. Specifically, in addition to the opt-out tariff, Ordering Paragraph 2 of the Decision ordered PG&E to meet in its Advice Letter the following requirements:

- “a. Establish procedures for residential customers to select the option to have an analog meter if they do not wish to have a wireless SmartMeter.
- b. Establish procedures to inform customers that a SmartMeter opt-out option is available. A customer currently on the delay list shall be informed that the customer will be scheduled to receive a wireless SmartMeter unless the customer elects to exercise the opt-out option.”

On February 16, 2012, in response to the CPUC directive, PG&E filed a Tier 1 Advice Letter 3278-G/4006-E (the Advice Letter), with the same effective date, seeking approval of its proposed procedures and two new rate schedules that allow residential electric and gas smart meter opt-out service.

The Advice Letter included an attachment (Attachment 2) that described the procedures by which, (a) PG&E will inform customers, including those on the delay list, that the opt-out option is available, (b) customers can inform PG&E of their choice to opt-out of smart meter use, and (c) PG&E will deem a customer to have elected service under the Opt-Out Program where the customer has not responded to PG&E’s notices and outreach *and* has not provided reasonable access to the customer’s premise to allow PG&E installers to install the smart meter.¹

¹From PG&E AL 3278-G/4006-E, Attachment 2 at p. 3:

“Pursuant to Decision 12-02-014, a customer must affirmatively elect to opt-out of the SmartMeter™ Program, and shall default to SmartMeter™-based utility service absent such an election. If PG&E makes a field visit to a customer’s residence for purposes of installing a SmartMeter™ and the customer does not provide reasonable access to PG&E to install a SmartMeter™ after being provided notice of eligibility for service under this Opt-Out Program and not electing to opt-out, the customer shall be deemed to have elected service under this Opt-Out Program.”

NOTICE

Notice of PG&E Advice Letter 3278-G/4006-E was made by publication in the CPUC's Daily Calendar. PG&E states that a copy of the Advice Letter was sent to parties listed on the Service Filing list in Application (A.)11-03-014.

PROTEST

On March 7, 2012, Mr. Edward Hasbrouck filed a protest to the Advice Letter disputing certain language in the SmartMeter Opt-Out Program Tariff proposed by PG&E, as well as raising other issues relating to PG&E's authority regarding smart meter installations.

On March 14, 2012, PG&E submitted a reply to the protest, arguing that Energy Division reject the protest because the Advice Letter is directly compliant with CPUC orders in D.12-02-014, and the protest relating to its meter installation authority is outside the scope of the Advice Letter filing.

Energy Division reviewed the matter and on March 19, 2012, issued a disposition letter rejecting the protest and approving PG&E's Advice Letter. On March 28, 2012, Mr. Hasbrouck sent a Request for Commission Review of Energy Division's disposition.

On March 29, 2012, Energy Division withdrew without prejudice the March 19 disposition letter upon learning of procedural errors associated with service of the disposition, specifically that both the March 14 PG&E reply to the protest and the March 19 Energy Division's disposition letter were not properly served to Mr. Hasbrouck on a timely basis.

On April 5, 2012, the CPUC's Legal Division served a copy of the March 14 PG&E reply to the protest via a certified letter to Mr. Hasbrouck. In the included cover letter, the CPUC explained the procedural errors and provided a 10-day period to Mr. Hasbrouck to review the materials that were not previously served. The cover letter from the CPUC explained that this review period cured the procedural errors, and explained that Mr. Hasbrouck's Request for Review of

Energy Division's disposition would be held in abeyance until a final disposition was issued.

On May 15, 2012, the Energy Division issued a disposition letter that rejected Mr. Hasbrouck's March 7 protest on the basis that it was not based on proper grounds allowed by General Order (GO) 96-B² for protest of an Advice Letter. Specifically, the Energy Division determined that the protest did not demonstrate that the Advice Letter "is not authorized by [the] CPUC order on which the utility relies." (General Rule 7.4.2 subd. (2)). Further, the protest did not meet any of the other grounds allowed for protest (that is, General Order 96-B, Rule 7.4.2, subd. 3, 5, and 6). The disposition letter also approved the Advice Letter as filed.

On May 26, 2012, Mr. Hasbrouck filed a second Request for Review of the Energy Division's May 15 disposition letter, referencing his arguments in the earlier protest and the first Request for Review in its entirety.

The Energy Division has prepared this Resolution in response to Mr. Edward Hasbrouck's May 26, 2012 Request for Commission Review of Energy Division's disposition of PG&E AL 3278-G/4006-E, as provided by GO 96-B.

DISCUSSION

This Resolution affirms the Energy Division disposition letter dated May 15, 2012, which approved PG&E AL 3278-G/4006-E as filed. The protest by Mr. Hasbrouck of PG&E's Advice Letter is rejected as it fails to satisfy any of the six grounds allowed by GO 96-B for protesting an Advice Letter.

² GO 96-B General Rule 7.4.2 reads in part:

"An advice letter may be protested on one or more of the following grounds:

[. . .]

(2) The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies;

General Rule 7.4.2 further explains: "As illustrated in the following examples, *a protest may not rely on policy objections to an advice letter where the relief requested in the advice letter follows rules or directions established by statute or Commission order applicable to the utility.*"

Mr. Hasbrouck makes essentially three arguments in his Request for Review of Industry Division Disposition: 1) the procedure described by PG&E in the Advice Letter for determining customers' intent with respect to their participation in the opt-out program is not authorized by the Decision; 2) PG&E does not have the right of access to the customer premises to install a wireless smart meter for a variety of reasons, including because the utility's traditional access right does not extend to wireless equipment that is part of the smart meter; and 3) the Advice Letter is automatically suspended due to procedural errors invalidating the Energy Division disposition, including possible violation of the Public Records Act by the CPUC.

As explained below, the protest is rejected because it is not based on any of the grounds allowed by GO 96-B for protest of an Advice Letter. The protest does not demonstrate that PG&E's proposed actions would violate CPUC orders, nor does it satisfy any other grounds for protests allowed by the General Order.

Before addressing the specifics of Mr. Hasbrouck's protest, the overall context involved in the implementation of the opt-out program is discussed first.

Pursuant to the Decision, PG&E must inform all customers, including those on the "delay list," about the opt-out program. After informing the customers, as a factual matter, PG&E potentially faces three different scenarios in terms of customer reactions to the opt-out information:

- The first scenario includes customers who take PG&E's standard service by default, i.e., the customers do not opt out and successfully receive a smart meter (or continue to keep their existing smart meter).
- The second scenario includes customers who affirmatively opt-out and receive an analog meter (or retain an existing analog meter).
- In the third scenario includes those customers that currently have analog meters and are unresponsive after being informed of the availability of the opt-out option, even after the multiple attempts described by PG&E to obtain an affirmative opt-out decision by the customer.

For the customers in the third scenario just described, PG&E will conduct a field visit at some point in time to attempt to install a smart meter on the premise of the unresponsive customers. It is presumed that there will be some customers

who allow PG&E to successfully install a smart meter during such a field visit by PG&E's installer. However, PG&E anticipates there may still be a small group of those customers who deny access (either actively or passively) to PG&E, preventing it from installing a smart meter. It is the procedure that PG&E has identified to handle this fourth scenario of customers that is the subject of Mr. Hasbrouck's protest.

For customers in the fourth scenario (where a customer has been informed of his or her ability to opt-out, has not responded affirmatively with an opt-out selection, and then subsequently denies access to PG&E installers preventing the installation of a smart meter), PG&E proposed in its Advice Letter to deem such customers as having effectively selected the opt-out option.

This Resolution finds that Mr. Hasbrouck's contention that the procedure described by PG&E in the Advice Letter for determining customers' intent with respect to their participation in the opt-out program is not authorized by the Decision is incorrect.

Summary of Mr. Hasbrouck's Protest of PG&E's Advice Letter

Specifically, Mr. Hasbrouck argues that the proposed procedure by which PG&E "deems" the intent of certain customers (who *do not affirmatively choose* the opt-out option and then do not provide PG&E "reasonable access" to the meter during a visit by PG&E for the purpose of installing a smart meter, i.e., the fourth scenario customers described above) as having effectively selected the opt-out option is inconsistent with D.12-02-04.

Mr. Hasbrouck asserts that "The opt-out program authorized by the CPUC's decision was ... expressly limited to those customers who, as a factual matter, 'do not wish to have a SmartMeter.' And the action authorized by the Decision to be taken in cases where a customer does not affirmatively opt out was limited to 'scheduling' the customer to 'receive' a SmartMeter."³ In other words, according to Mr. Hasbrouck, the Decision did not authorize PG&E to proceed to attempt to

³ Edward Hasbrouck Protest of March 7, 2012, at p. 2.

install a smart meter for these customers who did not respond to the opt-out notification; and further did not authorize PG&E to then infer the intent of those customers who deny access to PG&E to their meters as having effectively selected the opt-out option. Mr. Hasbrouck also in effect argues that PG&E has no right to access meters to install a smart meter,⁴ and thus PG&E has no authority to deem the denial of access by some customers as an exercise of the opt-out option.

Discussion of Mr. Hasbrouck's Protest of PG&E's Advice Letter

The situation Mr. Hasbrouck refers to applies only to the customers in the fourth scenario described previously. Procedurally, it should be noted that if the customer fails to exercise the opt-out option after receiving notices from PG&E regarding its intent to install a smart meter, any non-responsive customer (including those on the "delay list"), is subject *by default* to the smart meter

⁴ *Ibid.* at p. 2, "The Commission's decision neither made nor authorized such a conclusive factual inference that any such customers [**i.e., non-responsive, prevent access***] "do not wish to have a SmartMeter" or have "elected" any particular type of service or tariff. [...]This is a factual question concerning the actual wishes of such customers. To the extent that PG&E claims that all such customers "do not wish to have a SmartMeter", that is a disputed factual issue ...

[The CPUC]...must consider ...the reasons why customers might not be at home when PG&E makes a field visit, might not be authorized to grant access for this purpose, and/or might not grant access for reasons other than that they "do not wish to have a SmartMeter."

[...]

To the extent that PG&E proposes to include a requirement for customers to "provide reasonable access to PG&E to install a SmartMeterTM" as a criterion of assignment to a particular tariff and/or the assessment of additional fees associated with such a tariff, this requires, ...full consideration of what, if any, provision of access by customers to PG&E for this purpose is "reasonable", ...

To the extent that PG&E claims that all such customers "do not wish to have a SmartMeter", that is also a "material error" of fact and grounds for this protest."[*Added by Energy Division]

deployment *already authorized by earlier CPUC decisions* D.06-07-027⁵ and D.09-03-026⁶. Contrary to Mr. Hasbrouck's contention that PG&E is not authorized to install smart meters for these customers, these earlier CPUC decisions *directed* PG&E to deploy smart meters at all residential customer locations (except as modified by the Decision to exclude only those customers who affirmatively elect the opt-out option). In other words, PG&E is correct to interpret the previous CPUC decisions, together with the Decision, as *requiring* PG&E to install smart meters at the locations of the non-responsive customers.

With respect to PG&E's field visits to a customer site in order to install a smart meter on their premises, we note that the customer is *required* to provide the utility with access to the existing meter for replacement under Rule 16 A.11 of PG&E Electric Rules.⁷ Hence, for those non-responsive customers who then deny reasonable access to PG&E to install a smart meter after attempts to reach these customers to obtain an affirmative opt-out election have failed, we find that the procedure proposed by PG&E to deem the actions of such customers as

⁵ *Final Opinion Authorizing Pacific Gas and Electric Company To Deploy Advanced Metering Infrastructure*, issued on July 20, 2006 in Application (A.) 05-06-028, at p. 68, available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/58362.pdf.

⁶ *Decision on Pacific Gas and Electric Company's Proposed Upgrade to the SmartMeter Program*, issued on March 31, 2009 in A.07-12-009, at p. 195, available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/98486.pdf.

⁷ PG&E Electric Rule 16 regarding Service Extensions reads in part;

"A. GENERAL [¶] 11. ACCESS TO APPLICANT'S PREMISES. PG&E shall at all times have the right to enter and leave Applicant's Premises for any purpose connected with the furnishing of electric service (meter reading, inspection, testing, routine repairs, replacement, maintenance, emergency work, etc.) and the exercise of any and all rights secured to it by law, or under PG&E's tariff schedules. These rights include, but are not limited to,

- a. The use of a PG&E-approved locking device, if Applicant desires to prevent unauthorized access to PG&E's facilities;
- b. Safe and ready access for PG&E personnel free from unrestrained animals;
- c. Unobstructed ready access for PG&E's vehicles and equipment to install, remove, repair, or maintain its facilities . . ."

Available at http://www.pge.com/tariffs/tm2/pdf/ELEC_RULES_16.pdf

effectively selecting the opt-out option and enrolling them into the opt-out program is reasonable and that PG&E is authorized by the Decision and prior CPUC orders and rules to establish this procedure.

Were it not for the presumption of opt-out as to scenario four customers, PG&E would be entitled to terminate the electric service to a customer if it is prevented from accessing its metering equipment at that customer's site, under Rule 3 regarding Application for Service⁸, Rule 11 regarding Discontinuance and Restoration of Service⁹, and Rule 16 (cited previously) regarding Service Extensions. Between the two alternatives that PG&E could have proposed in this Advice Letter to address the fourth scenario of customers described earlier, we find that enrolling the unresponsive customer into the opt-out program is a less severe and/or hazardous option for the customer than shutting off their electric service.

Further, PG&E's procedure prevents an unresponsive customer from unfairly benefitting from preventing PG&E access to the utility's equipment. Thus, we conclude that PG&E's procedure at issue is a reasonable, common-sense implementation of the Decision, along with earlier smart meter deployment

⁸ PG&E Electric Rule 3 reads in part:

"The application (for electric service) is merely a request for service, and does not in itself bind PG&E to serve except under reasonable conditions, nor does it bind the customer to take service for a longer period than the minimum requirements of the rate. PG&E may disconnect or refuse to provide service to the applicant if the acts of the applicant or the conditions upon the premises..."

Available at http://www.pge.com/tariffs/tm2/pdf/ELEC_RULES_3.pdf

⁹PG&E Rule 11 reads in part:

"H. UNSAFE APPARATUS OR CONDITION 1. PG&E may deny or terminate service to the customer immediately and without notice when:

- a. PG&E determines that the premises wiring, or other electrical equipment, or the use of either, is unsafe, or endangers PG&E's service facilities; or
- b. The customer threatens to create a hazardous condition; or..."

Available at http://www.pge.com/tariffs/tm2/pdf/ELEC_RULES_11.pdf

CPUC decisions,¹⁰ and a reasonable solution to the practical situations that could arise. We find PG&E's Advice Letter to be in compliance with the CPUC orders.

This Resolution finds that Mr. Hasbrouck's protest challenging PG&E's right of access to the customer premise to install a wireless smart meter is outside the scope of the Advice Letter.

Any challenge to the utility's right of access required to install wireless smart meters ordered by the CPUC in D.06-07-027 and D.09-03-026 constitutes a policy objection that is not a permissible ground for protesting an Advice Letter, per GO 96-B, General Rule 7.4.2, discussed above. We therefore find that Mr. Hasbrouck's protest challenging PG&E's right of access to the customer premise to install a wireless smart meter is outside of the scope of the subject Advice Letter.

This Resolution rejects Mr. Hasbrouck's argument that the Advice Letter is invalid due to procedural errors.

The procedural errors of PG&E's failure to serve its reply to Mr. Hasbrouck's protest and the Energy Division failure to serve the initial disposition were cured by service of relevant documents on Mr. Hasbrouck. Mr. Hasbrouck was also provided with an appropriate review period for these documents, the same as the one he would have been provided had the errors not occurred. Mr. Hasbrouck has failed to elucidate any actual harm to himself or his case arising from these cured procedural defects. Thus, Mr. Hasbrouck's argument is rejected.

In addition, Mr. Hasbrouck alleges that potential Public Records Act violations invalidate either the Advice Letter, or the Energy Division disposition, or both. These claims are rejected as they are not proper grounds for a protest of an Advice Letter.

¹⁰ D.06-07-027 and D.09-03-026.

COMMENTS

Public Utilities Code section 311, subdivision (g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC.

The 30-day comment period for the draft of this Resolution was neither waived nor reduced.

FINDINGS AND CONCLUSIONS

1. D.12-02-14 directed PG&E to file a Tier 1 Advice Letter to establish procedures to implement a smart meter opt-out option for customers who do not wish to have a wireless smart meter and to establish a Smart Meter Opt-Out Tariff with CPUC specified opt-out fees.
2. PG&E filed a Tier 1 Advice Letter 3278-G/4006-E proposed opt-out procedures and two new rate schedules that allow residential electric and gas smart meter opt-out.
3. Mr. Edward Hasbrouck filed a timely protest.
4. The protest does not include any convincing argument that the Advice Letter does not comply with or exceeds the scope of the Decision and prior Commission orders and/or rules. The protest fails to satisfy any of the six grounds allowed by GO 96-B for protesting an Advice Letter.
5. PG&E's AL 3278-G/4006-E complies with the Decision as filed.

THEREFORE, IT IS ORDERED THAT:

1. The Energy Division disposition letter dated May 15, 2012 is affirmed.
2. PG&E Advice Letter 3278-G/4006-E, with proposed procedures a) to inform customers about the smart meter opt-out program, b) to allow them

to select whether to choose the opt-out option, and c) to deem unresponsive customers who deny access to PG&E for the purpose of installing a smart meter as having effectively opted-out; is approved.

3. This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on September 27, 2012. The following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director