



BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION

**FILED**

10-26-11  
04:59 PM

OF THE STATE OF CALIFORNIA

WILNER & ASSOCIATES,

C1110028

Complainant,

vs.

Case No. \_\_\_\_\_

PACIFIC GAS AND ELECTRIC  
COMPANY, a corporation,

Defendant.

(U-39-M)

**COMPLAINT**

David L. Wilner  
Wilner & Associates  
P.O. Box 2340  
Novato, CA 94948-2340  
415-898-1200  
[DavidLWilner@aol.com](mailto:DavidLWilner@aol.com)

Dated: October 26, 2011

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

WILNER & ASSOCIATES,  
Complainant,

vs.

PACIFIC GAS AND ELECTRIC  
COMPANY, a corporation,  
Defendant.

(U-39-M)

Case No. \_\_\_\_\_

**COMPLAINT**

**GENERAL ALLEGATIONS**  
(Factual Background)

1. Complainant, Wilner & Associates ("Wilner"), is a consultant firm that specializes in investigating electromagnetic radiation issues for residential customers. Wilner makes recommendations for remediation when appropriate. Wilner also works with clients that suffer from electromagnetic sensitivity, and the installation of a Smart Meter on their property has a negative effect on their health. This condition causes headaches, ringing in the ears, anxiety, sleep disorders, depression, and other symptoms.

2. Defendant, Pacific Gas and Electric Company ("PG&E"), U-39-M, is an investor-owned utility corporation subject to regulation by the California Public Utilities Commission ("Commission"). PG&E provides gas and electric service to customers located in most of northern and central California. In decision numbers 06-07-027 (July 20, 2006) and 09-03-026

(March 12, 2009), the Commission authorized PG&E to deploy Smart Meters throughout its service area at an estimated cost of \$2.2 billion.

3. PG&E has installed approximately 8 million Smart Meters to date along with a mesh network that connects the electric Smart Meters to various collection points strategically located throughout its service territory. The customers' usage information is then transmitted from the collection points to PG&E's computer center over a cellular telephone network for billing and management purposes. As part of the mesh network, the electric Smart Meters act as a relay for each other so that when one meter is unable to communicate with the collection point, the data transmission is relayed by one or more of the other meters. Each collection point provides two-way data communications to as many as 5,000 electric Smart Meters located in the same geographic area. The gas Smart Meters communicate directly with PG&E's computer center over a separate cellular telephone network. Upon completion of the deployment, there will be approximately 10 million Smart Meters in operation.

4. The Smart Meter deployment authorized by the Commission has drawn heavy criticism from PG&E's customers complaining about health and safety concerns as well as a number of other issues. Most striking is the fact that when Smart Meters are installed on certain customers' homes, they become ill and, in some instances, it has become necessary for them to seek medical attention. For some customers, the problem is so severe that they have had to move out of their homes. There are also customers that have become disabled to the point that they are unable to work at their regular occupations. PG&E has received letters from customers' doctors explaining that they suffer from electromagnetic sensitivity, and the Smart Meters may be at fault. However, PG&E has refused to acknowledge the medical issues, and take action to solve the problem. Customers have also sent letters to the Commission, and that has not helped either.

As a result, those customers are being subjected to a new technology that is extremely harmful to them, and have no recourse. PG&E has allowed this situation to continue to the point where some customers have removed their Smart Meter, and installed an analog meter in its place. PG&E has responded by threatening those customers with federal and state criminal prosecution for "tampering" with the meters, and the possibility of their power being disconnected.

5. PG&E has chosen to ignore the public outcry, and continues to install Smart Meters. This has led to protests, customers being arrested because they objected to Smart Meters being installed in their community, and negative publicity in the media. In addition, a number of counties in California have enacted moratoriums in an attempt to stop Smart Meter installations in their jurisdictions, and many cities have joined in that effort by enacting ordinances to accomplish the same thing. There is also proposed legislation at the state level to try and resolve this controversy.

6. Despite all these problems, PG&E continues to claim that the Smart Meters are safe, and do not cause health impacts or other problems. Due to the continuing complaints, the Commission has instructed PG&E to offer an opt-out option for those customers that do not want a Smart Meter. Unfortunately, there is no guarantee that the alternative proposed by PG&E to disconnect the radio transmitter in the Smart Meters will be an adequate solution because, among other things, the Smart Meters in the customers' neighborhoods will still have radio frequency ("RF") transmitters. This is extremely important for people that suffer from electromagnetic sensitivity because they have an adverse reaction when they are exposed to RF radiation levels that are substantially lower than current guidelines established by the Federal Communications Commission ("FCC")

//

**First Cause of Action**  
(Misleading Representation)

7. In order to obtain authorization from the Commission for the Smart Meter deployment, PG&E represented, among other things, that the RF radiation from the Smart Meters was one watt or less. PG&E made this claim to the Commission, other government agencies, its ratepayers, and the public at large. This information was distributed through written materials circulated by PG&E, and posted on its Web site. However, this representation is false. The fact is that the Smart Meters generate two watts of RF power, twice as much as claimed by PG&E. According to PG&E's representation, the 8 million Smart Meters that have been installed so far would generate approximately 8 million watts of RF power intermittently, but in reality they generate approximately 16 million watts of pulsed RF energy. Therefore, PG&E's customers and the public at large are being exposed to significantly more RF radiation than they were led to believe.

**Second Cause of Action**  
(UL Misrepresentation)

8. PG&E has misled its customers as to whether certain of its Smart Meters were registered with Underwriters Laboratories ("UL"). PG&E's customers have complained that the meters should be UL listed to protect their health and safety. However, PG&E has responded by claiming that such approval is not required because the Commission is responsible for that oversight. PG&E also claims that the Smart Meters that it is installing have never been registered with UL. This representation is false. The fact is that some of those Smart Meters were registered with UL, and that registration was canceled by the supplier even though it was valid through 2012. As a result, there is a serious question as to whether certain Smart Meters that PG&E has installed are safe and reliable.

**Third Cause of Action**  
(Failure to Disclose Smart Meter Defects)

9. PG&E has failed to inform its customers and the Commission that an investigation of the Landis+Gyr electric Smart Meters shows that some of them were not assembled properly, and certain components were subject to failure. As a result, some customers may have a defective meter installed on their property, which may present a risk to them.

**Fourth Cause of Action**  
(Misrepresentation Concerning FCC Guidelines)

10. PG&E claims that the electric Smart Meters that it has installed meet FCC guidelines concerning maximum permissible exposure ("MPE") to RF radiation by its customers. In fact, PG&E contends that such radiation is substantially lower than those requirements. However, the FCC's guidelines concerning MPE do not relate to electric Smart Meters that operate in the license-free portion of the spectrum (902 to 928 MHz). Since there are no applicable MPE guidelines, PG&E has created a false sense of security for its ratepayers and the public at large.

**Fifth Cause of Action**  
(Unlawful Use of Customers' Property)

11. PG&E is using an electric Smart Meter installed on one customer's premises to serve other customers as part of the Smart Meter deployment without that customer's knowledge and consent. As explained in Paragraph 3 above, one customer's Smart Meter may be relaying two-way data transmissions for as many as 5,000 neighbors' Smart Meters to PG&E's collection point. In this example, the customer's Smart Meter may be operating continuously in order to transmit data to and from the other Smart Meters in the mesh network. As a result, the customer is being exposed to considerably more RF radiation than PG&E has represented. Moreover, it is

unlawful for PG&E to use one subscriber's premises to serve other customers.

**Sixth Cause of Action**  
(Excessive Conduction)

12. The Smart Meters installed by PG&E are conducting excessive RF interference onto the customer's electrical wiring. This is referred to as "dirty electricity," and can be responsible for tripping ground fault interrupters, interfering with home security systems, baby monitors, and other electronic devices on the customer's premises. These conditions can cause electrical shock, electrocution, damage to the customer's appliances, and fires. In this instance, the dirty electricity is caused by the switching-mode power supply and possibly other components in the Smart Meter. The dirty electricity also flows onto the electrical wiring from the customer's premises to neighbors' homes that are served by the same PG&E distribution transformer.

**Seventh Cause of Action**  
(Excessive RF Radiation)

13. As part of the Smart Meter deployment, PG&E is offering customers the option of a feature called Home Area Network ("HAN"). There is a separate transmitter and receiver in the Smart Meter that operate in the unlicensed portion of the radio spectrum at 2.4 gigahertz to support this capability. Under this arrangement, if the customer's appliances are equipped with a communications chip, they will be able to communicate with each other and the Smart Meter to schedule usage times to conserve energy. Ultimately, this would be done automatically; that is, certain appliances would run at different times during the day and night to avoid peak demand periods. For example, the customer's air conditioner would be shutoff when an electric dryer is in use or vice-versa. Unfortunately, the duty cycle for the HAN transmitter is estimated to be 100 times greater than the duty cycle of the RF transmitter in the electric Smart Meter operating

at 902 to 928 MHz as part of the mesh network. As a result, there will be substantially more RF radiation in customers' homes and the surrounding area. The Commission has given PG&E permission to activate the HAN network feature of 5,000 Smart Meters for testing purposes. However, PG&E is not warning its customers about the potential health risks of activating the HAN feature.

**Eighth Cause of Action**  
(Failure to Investigate Customer Complaints)

14. As stated earlier in this complaint, PG&E refuses to investigate customer complaints that Smart Meters are causing them health problems. As a result, some customers have incurred substantial medical bills for doctor visits, blood tests, Magnetic Resonance Imaging (MRI) scans, and other attempts to diagnose their medical problems. In many instances, doctors have attributed the problem to electromagnetic sensitivity caused by Smart Meters installed on the customer's property. However, PG&E refuses to accept this possibility, and work toward finding a possible solution. Unfortunately, PG&E's customers do not have any recourse because their electric service is only available from PG&E. PG&E has a legal obligation to provide safe and reliable service to its customers, and has breached that responsibility in a careless and negligent manner.

**Ninth Cause of Action**  
(ADA Violation)

15. PG&E is completely ignoring the rights of customers that suffer from electromagnetic sensitivity. These customers are entitled to an accommodation (relief) under the Americans with Disabilities Act (“ADA”). However, PG&E refuses to offer those customers a conventional analog meter or other solutions to solve their medical problems even though they may have a letter from their doctor confirming the condition. Some customers with

electromagnetic sensitivity are receiving disability benefits from the Social Security Administration, but the payments they obtain do not restore the quality of life they enjoyed before Smart Meters were installed on their property.

**Tenth Cause of Action**  
(Customer Discrimination)

16. PG&E gives preferential treatment to certain customers when they complain about a Smart Meter installed on their property. This involves the installation of an analog meter at no cost to the customer. As a rule, it is someone who has appeared at Commission Business Voting Meetings, and has expressed their concern about health, safety, and other issues. However, PG&E is not extending the same consideration to all of its customers.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant requests the following relief:

1. With respect to the **First Cause of Action** (Misleading Representation):
  - (a) An order by the Commission requiring PG&E to reduce the effective radiated power ("ERP") for all electric Smart Meters installed (or to be installed) in its service area to one watt or less;
  - (b) An order by the Commission requiring that the reduction in ERP for the electric Smart Meters already installed shall be completed within one year from the effective date of this order. Electric Smart Meters installed after that date shall meet the one watt or less ERP requirement as well;
  - (c) An order by the Commission requiring PG&E to provide a progress report to Complainant and the Commission staff every thirty (30) days from the effective date of this order setting forth how many electric Smart Meters have been adjusted in accordance with (a)

above;

(d) An order by the Commission requiring PG&E to charge the cost of performing the reduction in ERP as stated in (a) and (b) above to its stockholders;

(e) An order by the Commission imposing a sanction against PG&E in an amount not less than \$750,000 for the misrepresentation referred to in the **First Cause of Action**; and

(f) Any sanction imposed by the Commission against PG&E shall be charged to its stockholders.

2. With respect to the **Second Cause of Action** (UL Misrepresentation):

(a) An order by the Commission requiring PG&E to obtain UL registration for all electric Smart Meters installed (or to be installed) in its service area as well as such registration for the communications modules in its gas meters installed (or to be installed) throughout its service area;

(b) An order by the Commission requiring PG&E to stop installing electric Smart Meters and communications modules in gas meters in its service area without UL registration;

(c) An order by the Commission requiring PG&E to charge the cost for the UL registration (and related work) to its stockholders;

(d) An order by the Commission requiring PG&E to complete UL registration for electric Smart Meters and communications modules in gas meters within one hundred and eighty (180) days of the effective date of this order;

(e) An order by the Commission requiring PG&E to pay a sanction in the amount of not less than \$750,000 for its misrepresentation concerning UL registration as set forth in the **Second Cause of Action**; and

(f) Any sanction imposed by the Commission against PG&E shall be charged to its stockholders.

3. With respect to the **Third Cause of Action** (Failure to Disclose Smart Meter Defects):

(a) An order by the Commission requiring PG&E to identify all Landis+Gyr electric Smart Meters that have been installed (or may be installed) in its service area that may not have been wired correctly and/or have defective components;

(b) An order by the Commission requiring PG&E to issue a recall notice to its customers for the Smart Meters described in (a) above, and to replace them with ones that are free from defects or other technical problems;

(c) An order by the Commission requiring PG&E to replace the Landis+Gyr Smart Meters identified in (a) above within one hundred and eighty (180) days from the effective date of this order;

(d) An order by the Commission requiring PG&E to pay a sanction in the amount of not less than \$750,000 for not disclosing the electric Smart Meter defects as set forth in the **Third Cause of Action**; and

(e) Any sanction imposed by the Commission against PG&E shall be charged to its stockholders.

4. With respect to the **Fourth Cause of Action** (Misrepresentation Concerning FCC Guidelines):

(a) An order by the Commission requiring PG&E to inform all of its customers that have an electric Smart Meter installed on their property that FCC guidelines relating to MPE

to RF radiation do not apply to those meters. Therefore, there is a question as to whether the meters are safe with respect to health impacts;

(b) An order by the Commission requiring that the wording for the notice be approved by Complainant and the Commission staff before it is distributed by PG&E to its customers;

(c) An order by the Commission requiring PG&E to issue the notice within one hundred and eighty (180) days from the effective date of this order; and

(d) An order by the Commission requiring PG&E to provide its customers that are concerned about MPE from their electric Smart Meter the right to have an analog meter instead. This shall be done at no cost to the customer unless the Commission establishes rates and charges for such an opt-out option.

5. With respect to the **Fifth Cause of Action** (Unlawful Use of Customers' Property):

(a) An order by the Commission requiring PG&E to obtain written consent from all of its customers that have an electric Smart Meter installed on their property allowing PG&E to use that Smart Meter to provide Advanced Metering Infrastructure service to other customers;

(b) An order by the Commission providing that if a customer refuses such consent, PG&E shall disable the radio receiver and transmitter in the customer's Smart Meter at no cost to that customer;

(c) An order by the Commission requiring PG&E to obtain written consent as stated in (a) above for all future electric Smart Meter installations or disable the radio receiver and transmitter in the Smart Meter if the customer refuses such consent. This shall be done at no cost to that customer; and

(d) An order by the Commission requiring PG&E to complete (a) and (b) above within one hundred and eighty (180) days from the effective date of this order.

6. With respect to the **Sixth Cause of Action** (Excessive Conduction):

(a) An order by the Commission requiring PG&E to have an independent laboratory test the General Electric and Landis+Gyr electric Smart Meters that are being installed by PG&E to determine the level of conduction onto the electrical wiring in customers' homes to ensure that it complies with FCC Part 15 (B) requirements;

(b) An order by the Commission requiring that this shall be accomplished in accordance with FCC protocol for conducting such tests, and the results shall be submitted to Complainant and the Commission staff within one hundred and eighty (180) days from the effective date of this order; and

(c) An order by the Commission stating that if the electric Smart Meters do not satisfy the requirements set forth in (a) above, PG&E shall make arrangements with General Electric and/or Landis+Gyr to make the necessary modifications to their electric Smart Meters so they are compliant (this includes those that have or will be installed by PG&E).

7. With respect to the **Seventh Cause of Action** (Excessive RF Radiation):

(a) An order by the Commission requiring PG&E to stop offering and installing the HAN feature for Smart Meter customers until such time as an assessment is made by an independent laboratory as to the health and safety issues that may be associated with the duty cycle of the separate RF transmitter for the HAN feature in the electric Smart Meter;

(b) An order by the Commission requiring PG&E to have the same evaluation made for the router and Smart consumer appliances that would interact with each other and the

electric Smart Meter;

(c) An order by the Commission requiring PG&E to provide information to existing and prospective customers concerning possible health impacts, if any, of the HAN feature as determined in (a) and (b) above;

(d) An order by the Commission requiring that the studies and notification to customers shall be completed within one hundred and eighty (180) from the effective date of this order; and

(e) An order by the Commission requiring PG&E to charge the cost for the studies and customer notification to its stockholders.

8. With respect to the **Eighth Cause of Action** (Failure to Investigate Customer Complaints):

(a) An order by the Commission requiring PG&E to establish a company-wide policy for investigating customer complaints that Smart Meters installed on their property or nearby are causing them health problems. PG&E shall complete an investigation of the complaint within thirty (30) days of such notification, and provide a written report to the customer with a copy to the Commission staff setting forth what was learned from visiting the customer's premises (and surrounding area), and what steps will be taken if a problem is discovered;

(b) An order by the Commission requiring PG&E in instances where there is a health issue to install an analog meter at no cost to the customer, and take any additional steps that are necessary to remedy the problem; and

(c) An order by the Commission requiring PG&E to pay a fine to the Commission in an amount of \$10,000 for each incident when the above requirements have not been satisfied.

Such fines shall be charged to PG&E's stockholders.

9. With respect to the **Ninth Cause of Action** (ADA Violation):

(a) An order by the Commission requiring PG&E to investigate all claims by its customers that they are entitled to an ADA accommodation as such relief may relate to the installation of an electric Smart Meter or communications module on the gas meter on their premises or nearby;

(b) An order by the Commission requiring PG&E to install an analog meter at the customer's request at no cost due to the medical condition;

(c) An order by the Commission requiring PG&E to pay a fine of not less than \$10,000 for each incident where PG&E fails to provide the necessary accommodation to its customer that suffers from electromagnetic sensitivity; and

(d) An order by the Commission requiring PG&E to investigate and resolve ADA complaints within thirty (30) days from the time a customer informs PG&E of a problem.

10. With respect to the **Tenth Cause of Action** (Customer Discrimination):

(a) An order by the Commission requiring PG&E to install an analog meter for any customer that is concerned about health issues, and does not want a Smart Meter installed on his or her property. This shall be done at no cost to the customer unless the Commission approves an opt-out fee for this option;

(b) An order by the Commission requiring PG&E to accomplish this within thirty (30) days from the date a customer makes such a request; and

(c) An order by the Commission requiring PG&E to pay a fine of not less than \$10,000 for each incident where PG&E discriminates against a customer by refusing to replace an electric Smart Meter and/or the communications module for the gas meter as requested.

11. An order by the Commission awarding advocate's fees and costs to Complainant subject to evidence supporting such claims to be presented at an evidentiary hearing.

12. Such other and further relief as the Commission may deem appropriate.

**CATEGORY OF PROCEEDING, NEED FOR HEARING, ISSUES,  
AND PROPOSED SCHEDULE**

1. Because this is a formal complaint, the proposed category for the proceeding is adjudicatory. An opportunity for hearing is necessary. The issues are set forth herein.

2. Wilner proposes the following schedule for this proceeding:

Service of Complaint	Day 1
Answer	Day 31
Prehearing Conference	Day 50
Complainant's Opening Testimony	Day 110
Defendant's Reply Testimony	Day 140
Complainant's Rebuttal Testimony	Day 160
Hearings	Days 180-185
Complainant's Opening Post-Hearing Brief	Day 210
Defendant's Reply Brief	Day 240
Complainant's Rebuttal Brief	Day 260
Proposed Decision	Day 280
Comments on Proposed Decision	Day 310
Final Decision	Day 340

## **PARTIES**

1. Complainant Wilner & Associates is a sole-proprietorship owned and operated by David L. Wilner.

Contact information for Complainant:

Wilner & Associates  
P.O. Box 2340  
Novato, CA 94948-2340  
415-898-1200  
E-Mail: [DavidLWilner@aol.com](mailto:DavidLWilner@aol.com)

2. All pleadings, correspondence, and other communications concerning this complaint should be sent electronically to David L. Wilner at the e-mail address shown above.

3. Defendant PG&E (U-39-M) is an investor-owned utility corporation that provides electric and gas service to subscribers within the State of California. PG&E's corporate office is located at 77 Beale Street, #100, San Francisco, CA 94105, telephone number 415-973-7000.

## **JURISDICTION**

Sections 701, 1702, and 1707 of the Public Utilities Code ("P.U. Code") provide the Commission with jurisdiction over breaches by California utilities of the P.U. Code and Commission decisions, rules, and policies. PG&E is a California public utility subject to the P.U. Code.

## **INFORMAL RESOLUTION**

In accordance with Rule 4.2(c) of the Commission's Rules of Practice and Procedure, Wilner has contacted the Commission staff in an attempt to resolve this matter informally.

//

//

However, those efforts were unsuccessful.

Respectfully submitted,

/s/

\_\_\_\_\_  
David L. Wilner  
Wilner & Associates  
P.O. Box 2340  
Novato, CA 94948-2340  
415-898-1200  
[DavidLWilner@aol.com](mailto:DavidLWilner@aol.com)

Dated: October 26, 2011

**VERIFICATION**

I am the Complainant in the above-entitled matter; the statements in the foregoing document are true of my knowledge, except as to matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of October, 2011, at Novato, California.

/s/  
\_\_\_\_\_  
David L. Wilner  
Wilner & Associates  
P.O. Box 2340  
Novato, CA 94948-2340  
415-898-1200  
[DavidLWilner@aol.com](mailto:DavidLWilner@aol.com)