BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2011.	Application 09-12-020 (Filed December 21, 2009)
Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.	Investigation 10-07-027 (Filed July 29, 2010)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK, ON THE PROPOSED DECISION OF ALJ FUKUTOME AND ALTERNATE DECISION OF COMMISSIONER PEEVEY

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REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION OF ALJ FUKUTOME AND ALTERNATE DECISION OF COMMISSIONER PEEVEY

Pursuant to Rule 14.3(d) of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) submits these reply comments on the Proposed Decision of Administrative Law Judge David Fukutome (Proposed Decision) and the Alternate Proposed Decision of Commissioner Peevey (Peevey Alternate). TURN replies to the comments of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).[1]

The utilities' arguments rely on two assertions that the Commission must reject as unfounded and unsupported.

- Most remarkably, the utilities imply that had they known that replacing electromechanical meters with SmartMeters might mean a reduction in the return earned on the replaced meters, there is a chance they would not have pursued SmartMeters. The Commission should reject this self-serving suggestion that the utilities are so short-sighted that they would forego an opportunity to increase rate base by billions of dollars in order to avoid jeopardizing their ability to earn a return on a fraction of that amount.

- Second, the utilities continue to argue that PG&E testimony that merely alluded to the return on scrapped meters issue, followed by a Commission decision that made no mention of that specific issue or the "used and useful" principle that is implicated by that issue, embody "precedent" that the Commission must now obey. There could be no weaker record supporting the severe erosion of the "used and useful" principle, yet that is precisely what the utility comments seek here.

I. The "Used and Useful" Principle Remains An Important Element Of Cost-of-Service Ratemaking and, Therefore, The Commission Must Reject The Utilities' Invitation To Abandon Or Ignore It.

In all of the kerfuffle raised in the utility opening comments, it would be easy for the Commission to lose sight of the basic regulatory at issue here:

> Under traditional regulation, utilities would have the opportunity to recover the amount of the original construction cost of a plant over the plant's expected useful life, plus a reasonable return tied to risk, <u>as long as the plant remained used and useful for public utility purposes</u>.[2]

Given that "[e]lectromechanical electric meters replaced by SmartMeters are no longer used and useful,"[3] the Commission is left with the question of whether to permit PG&E an ongoing opportunity to recover any return on the utility's remaining original cost of the removed meters. It is very important that the

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[1] TURN fully supports the recommended changes from the opening comments of Aglet Consumer Alliance, and also supports the positions set forth in Aglet's reply comments.

[2] D.95-12-063 as modified by D.96-01-009, issued in R.94-04-031 (electric industry restructuring rulemaking) (1996 Cal. PUC LEXIS 28, *69) [emphasis added]. PG&E's comments include a lengthy quote that surrounds this central point from the earlier decision, but omitted the reference to the used and useful principle. PG&E Comments, p. 8.

[3] Proposed Decision, FOF 26; Peevey Alternate, FOF 26.

Commission's final decision in this matter be fully consistent with the "used and useful" principle, rather than effectively abandon that principle as the utilities seek.

II. Even Though PG&E Stands To Earn Hundreds of Millions of Dollars Annually From The SmartMeter Investment, It Perceives A "Penalty" for "Doing The Right Thing" Should The Commission Reduce The Return on Scrapped Meters.

PG&E and the other utilities face a dilemma – how to convince the Commission to permit them to continue earning a return on scrapped meters, despite the fact that any return greater than zero means that the utility would be "earning" a rate of return on two meters for every meter actually serving a customer. In a clear case of "if the facts don't support your case, try arguing fairness," the utilities claim that anything less than the full return on the scrapped meters would be unfair to the utility and its shareholders. None of the arguments hold any water.

No party disputes that the SmartMeter investment is "inextricably linked" to the early removal of the electromechanical meters.[4] That is, in order to create the opportunity to add several billion to rate base (from the investment in SmartMeters), the utility had to take all of the existing meters out of service. Yet PG&E claims it would "suffer a detriment" if it did not have the opportunity to earn its full return on both the removed meters as well as the SmartMeter investment, and even goes so far as to claim that any lowering of the return on the scrapped meters would make utilities "less willing to invest in similar technological investments."[5]

If PG&E's position accurately characterizes how the utility's management makes investment decisions, the problems at the utility run far deeper than the simple greed that might explain asking for a return on two meters for every one in service. After all, PG&E's position leads to the logical conclusion that the utility would consider foregoing $2 billion in "technological investments" in order to avoid jeopardizing the opportunity to earn a return on $341 million of remaining investment in the meters that the "technological investments" would replace. This despite the fact that the SmartMeter investment comes with lower-than-usual risk, given that it is insulated from after-the-fact reasonableness review (so long as PG&E keeps its cost overruns to less than $100 million for the project). Even if PG&E is willing to claim this level of myopia in its approach to weighing investment opportunities as a tactic to preserve a return on scrapped meters, there is no basis for having the Commission's decision here embrace such shortsightedness.

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[4] "In the case of AMI, it is indisputable that the installation of new meters and the retirement of the old were inextricably linked: that is, the implementation of AMI could not have occurred but for the retirement of the old meters and the retirement of the old meters would not have occurred but for the installation of the new meters." PG&E Opening Comments, p. 9.

[5] PG&E Opening Comments, pp. 6 and 7.

Similarly, the notion that a reduced return on scrapped meters would impose "an unwarranted and unfair punishment on equity-holders"[6] makes no sense, again in light of the opportunity to achieve earnings on approximately $2 billion of investment in the SmartMeters that led to the earlier meters getting scrapped. TURN submits that any number of firms, regulated and unregulated, would gladly sign up for such "punishment." And SDG&E's claim that "investors would also be at risk for any utility investments in technologies that could become obsolete before the end of their ratemaking lives"[7] does not add anything to the analysis, but merely restates the "used and useful" principle. That is and always has been the risk that utility investors bear, except that the Commission has typically limited that risk to the loss of any return on that investment, while permitting full recovery of the investment itself.[8]

III. Citing D.09-03-026 as "Precedent" On The Appropriate Return For Scrapped Meters Ignores The Fact That PG&E's Testimony And The Resulting Decision Never Directly Addressed Such A Return Or Its Impact On PG&E Ratepayers.

PG&E continues its argument that any reduction in the return on removed meters is contrary to the "precedent" established in D.09-03-026, based on PG&E's ratemaking proposal from that proceeding.[9] The utility's ratemaking proposal for the meters it would retire and replace with SmartMeters consisted of two paragraphs, only one of which is even arguably relevant:

> As the new solid state meters are deployed, replaced existing meters will be retired at their original cost. The retirement of these meters is accomplished through a simple reduction to plant of the original cost installed with an equal and offsetting entry to accumulated depreciation. Therefore, there is no impact to the net book value (plant less accumulated depreciation). Because of the group depreciation accounting used by PG&E, any remaining plant investment will be recovered over the average life of the depreciation group.[10]

Finding of Fact 23 of the Proposed Decision correctly states "Neither the magnitude of the net plant balance for prematurely retired meters, nor the associated rate of return costs were identified in PG&E's prior testimony." In other words, in its SmartMeter application and testimony the utility devoted all of a paragraph to the treatment of replaced meters, merely hinted to the question of whether the remaining investment in those meters would continue to earn a return, and did not bother to flesh out even the most fundamental elements of its proposal. The SmartMeter decision (D.09-03-026) says nothing that might suggest the Commission was even aware that collecting a return on scrapped meters was part of the

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[6] PG&E Opening Comments, p. 8.

[7] SDG&E Opening Comments, p. 5.

[8] TURN Opening Brief, pp. 6-9.

[9] PG&E Opening Comments, pp. 2-3; also SDG&E Comments, *passim.*

[10] Ex. PG&E-18, Vol. 2, p. 8-14 (quoting from PG&E testimony in A.07-12-009, the PG&E SmartMeter proceeding. PG&E's rebuttal testimony includes a nearly identical quote from the utility's testimony in A.05-06-028).

utility's request. If PG&E truly believes that the Commission, by saying nothing in response to this paragraph in PG&E's testimony, intended to adopt an outcome that gives PG&E its full rate of return on plant that is no longer used and useful, even thought the Commission had no information about the associated costs and and performed no analysis of whether such an outcome comports with the "used and useful" principle, the utility does not hold the Commission's decision-making process in very high regard. The Commission should hold its decisions to a higher standard than PG&E does.

IV. The Commission Cannot Rely On Disputed Factual Assertions That Appear For The First Time In Briefs Or Comments On The PD.

TURN's testimony recommended that the Commission reduce PG&E's return on the scrapped meters from the full rate of return to zero.[11] If the utilities had any fact-based arguments they wished to make against that recommendation, the facts should have appeared in rebuttal testimony. Instead, the rebuttal on this point consisted of two paragraphs PG&E appears to have cut and paste from its earlier AMI and SmartMeter testimony. SDG&E and SCE each chose to say nothing in rebuttal (even though SCE presented testimony attempting to rebut other points made by DRA and intervenors).

The void that was the utility testimony on these matters did not stop them from making arguments based on disputable facts, first in their briefs, and now again in their comments on the Proposed Decision and Peevey Alternate. PG&E goes so far as to claim "[t]here is nothing in the record to rebut this evidence."[12] Where the utility chooses to present "this evidence" only after the evidentiary record has closed, it's not surprising that the record contains no rebuttal. And under such circumstances, the absence of rebuttal does nothing to substantiate "this evidence," but is merely the expected result from a sketchy utility tactic.

The Commission must disregard such extra-record claims regarding the purported investment risk[13] or harm to ratepayers.[14] Similarly, SCE's entirely new proposal for how to calculate a return on scrapped meters, based on an entirely new principle of leaving utility investors "indifferent on a present value basis,"[15] must also be ignored. The Proposed Decision and Peevey Alternate both recognize the

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[11] Ex. TURN-9, p. 9.

[12] PG&E Opening Comments, p. 5.

[13] "[R]educing the return for such replaced assets actually increases the risk of making investments subject to future replacement in the first place." PG&E Comments, p. 6. *See also*, SDG&E Comments, p. 4 [The risk to utilities "from implementing technological advancements is higher as compared to more traditional investments."] SDG&E's point ignores the risk-reducing elements of PG&E's SmartMeter ratemaking, such as the absence of reasonableness reviews absent substantial cost overruns.

[14] PG&E claims that any reduced return on scrapped meters "would harm customers throughout the State by making utilities less willing to invest in similar technological investments on their behalf." PG&E Comments, p. 7. As noted above, this presumes that the utility is willing to bypass the opportunity to add approximately $2 billion to its rate base.

[15] SCE Opening Comments, p. 3.

procedural disadvantage where an issue is first raised in a reply brief.[16] Where the issue or proposal appears for the first time in comments and requires a multi-page attachment setting forth the calculations, the procedural disadvantage is even more severe.

V. The Commission Must Ignore PG&E's Unexplained and Unsupported Proposed Changes to Findings of Fact.

PG&E proposes to reverse certain Findings of Fact without presenting any basis for the requested changes. For example, Finding of Fact 23 acknowledges that PG&E's showing in its AMI and SmartMeter testimony did not identify the net plant balance or rate of return costs associated with scrapped meters. Apparently not liking what such a finding might imply, PG&E proposes its elimination,[17] even though its comments do not directly address this point. PG&E also proposes substantial modifications to Findings of Fact 22 and 30, despite the absence of any discussion in its comments that might warrant such modifications. In each case, the utility seeks to re-write the Proposed Decision and Peevey Alternate more to its liking, but without any meaningful attempt to justify the proposed changes. Such a tactic is inappropriate, and the Commission must reject the changes.

VI. Finding of Fact 12 Reflects An Important Factor Supporting Adoption Of The New Reporting Requirement and Should Be Retained.

Even as PG&E claims to "not object" to the reprioritization and cost deferral reporting requirements, it would have the Commission re-write one of the findings central to these requirements. PG&E claims that Finding of Fact 12 in the Proposed Decision "contradicts" Finding of Fact 10 and should therefore be replaced with language that is more to the utility's liking.[18] The Commission should reject PG&E's proposed re-write of Finding of Fact 12. As described in the Proposed Decision,

> Much of what is authorized is based on the utility's depiction of its needs and associated costs. Those needs and costs are tested by the GRC process. Reprioritized needs and associated costs may not be so tested and may not result in the most efficient use of funds.[19]

Read in context of the further discussion in the body of the Proposed Decision, Finding of Fact 12 is accurate and appropriate. The entirety of the utility's argument against the finding is the mere allegation that it is "misplaced." This is not enough to warrant the wholesale re-write that PG&E seeks.

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[16] "[N]either [PG&E nor DRA] had an opportunity to respond to Aglet's concern, since it was expressed in Aglet's reply brief." Proposed Decision, p. 69; Peevey Alternate, p. 70.

[17] PG&E Opening Comments, Appendix A.

[18] PG&E Opening Comments, p. 16.

[19] Proposed Decision, p. 29.

Date: March 21, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert Finkelstein, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On March 21, 2011, I served the attached:

REPLY COMMENTS OF THE UTILITY REFORM NETWORK, ON THE PROPOSED DECISION OF ALJ FUKUTOME AND ALTERNATE DECISION OF COMMISSIONER PEEVEY

on all eligible parties on the attached list **A.09-12-002** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this March 21, 2011, at San Francisco, California.

/S/
Robert Finkelstein

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