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

Order Instituting Rulemaking to Consider Smart
Grid Technologies Pursuant to Federal Legislation
and on the Commission's own Motion to Actively
Guide Policy in California's Development of a
Smart Grid System.

(U39E)

Rulemaking 08-12-009
(Filed December 18, 2008)

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 E) ON PROPOSED DECISION
ADOPTING RULES TO PROTECT CUSTOMER
PRIVACY AND SECURITY**

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Dated: June 8, 2011

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) provides its reply comments on the May 6, 2011, Proposed Decision (PD) adopting rules to protect the privacy and security of customer electricity usage data. PG&E's reply comments are organized below under the particular sections of the PD and the specific parties commenting on those sections.

II. REPLY COMMENTS ON PROPOSED PRIVACY RULES AND PILOT STUDIES

A. Commission Jurisdiction.

Several parties continue to question the Commission's jurisdiction to apply its privacy rules to third parties which are not public utilities. (AT&T California, pp. 3- 4; Verizon California, Inc. *et al*, pp. 2, 4- 5) For the reasons stated in PG&E's legal brief on this issue filed earlier in this proceeding, PG&E agrees that the Commission has adequate jurisdiction to indirectly regulate the access of third parties to customer-specific information that is generated by public utility services and operations.¹ Moreover, where the information is the type of information covered by recently-enacted SB 1476, it is clear that the Legislature has directly conferred authority on the Commission to enforce rules protecting the privacy of such customer-

¹ PD, pp. 26- 28, citing PG&E's Opening Brief.

specific information where the information is provided directly to a utility or its contractors for purposes of providing public utility services, such as registration of consumer devices enabled by the utilities' advanced metering infrastructure.²

On the other hand, several parties raise questions and point out confusion regarding the PD's proposal to require utilities to condition registration of so-called "locked" third-party Home Area Network (HAN) consumer devices on the third party demonstrating compliance with the Privacy Rules. (E.g. SCE Opening Comments, pp. 3- 13- 14; SDG&E, pp. 6- 9; DRA Opening Comments, pp. 5- 7; TURN Opening Comments, pp. 4- 5) PG&E agrees with these comments that the definition of "locked" and "unlocked" HAN consumer devices is confusing and ambiguous to begin with; and that, further, the ability of the utility to identify the attributes of a HAN device that a customer buys directly from a third-party vendor is doubtful and potentially impracticable. Even if these practical issues can be overcome, there are legitimate questions on whether the requirement of direct utility enforcement may significantly delay and hinder the HAN device registration process itself, such that the convenience and ubiquity of HAN consumer devices is significantly deterred and slowed.

For these reasons, PG&E recommends that the issue of whether "locked" HAN devices need to be subject to more direct regulation should be deferred to a technical workshop, with interested parties and Commission staff authorized to forward recommendations to the Commission on whether and to what extent the Privacy Rules should be applied to the registration process for "locked" HAN devices.

B. Use and Disclosure Limitations.

Southern California Edison (SCE) requests that proposed Rule 6(c)(3) be revised to clarify that utilities are not liable for a third party's violation of the Privacy Rules if the utility has otherwise contractually required the third party to comply with the Rules and the customer has consented to the disclosure to the third party. (SCE Opening Comments, pp. 2, 5-8.) PG&E

² PD, pp. 27- 28, 32.

agrees that Rule 6(c)(3) could be unfairly and impractically interpreted to put utilities in the middle between customers and the third parties to whom the customers are directly consenting for disclosure of their information. PG&E also agrees with SCE that Public Utilities Code Section 8380(f) exempts the utility from liability where the disclosure is authorized by a customer to a third party, such as for a secondary purpose. (SCE Opening Comments, p. 2, fn. 3.) PG&E requests that the PD be revised as recommended by SCE.

SCE also requests that proposed Rule 6(c)(1) be revised to eliminate the requirement that utilities offer customers the opportunity to “opt out” of disclosure of their customer-specific information where the information is being used by a third party vendor for a utility-sponsored demand response, energy efficiency or energy management program. (SCE Opening Comments, pp. 3- 8- 11.) PG&E agrees that a possibly unintended result of this part of Rule 6(c)(1) could be to hinder the availability and marketing of CPUC-approved, utility-sponsored EE, DR and energy management programs that utilize third-party contractors to assist in targeted outreach and marketing to customers. For that reason, PG&E supports the clarification requested by SCE.

C. Recovery of Incremental Costs Incurred to Comply with the PD, Including the Costs of Third Party Access to Customer Usage Information.

San Diego Gas & Electric Company (SDG&E) confirmed in their opening comments that the PD’s assumptions regarding the costs of implementing third-party access to customer usage data were incorrect, and that its incremental costs to implement third party access would be at least \$1.6 million in addition to the \$650,000 to \$750,000 cited by the PD. (SDG&E Opening Comments, pp. 13- 14.) Similarly, SCE also points out that the PD made incorrect assumptions on the costs of implementing third-party access under OpenADE national standards, and that the PD should be revised to reflect the intent that the utilities’ third party access programs conform to OpenADE standards. SCE estimates that its costs of implementation would be at least \$5 million. (SCE Opening Comments, pp. 22- 25.)

PG&E agrees with SDG&E and SCE regarding the need for the PD to revise its estimates of the costs of implementing third-party access consistent with the national standards. The PD

should be revised to authorize the utilities to recover the reasonable incremental costs of their third party access programs.

D. PG&E Agrees with DRA and TURN that the HAN Pilots Mandated by the PD May Be Less Cost-Effective Than Other HAN Deployment Alternatives.

The Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) both commented that the Home Area Network (HAN) pilots mandated by the PD are unnecessary and may duplicate existing HAN activities already underway or more appropriately performed by non-utilities in the marketplace. (DRA Opening Comments, pp. 20- 22; TURN Opening Comments, pp. 12- 13.)

PG&E agrees with DRA and TURN that the HAN pilots may be premature, unnecessary and potentially duplicative. If, however, the PD is not revised to eliminate the mandated HAN pilots, PG&E renews the recommendation in its opening comments that the Commission expressly acknowledge the need for the pilots to be consistent with the development of the SEP 2.0 national standard and other developments in the marketplace.

III. CONCLUSION

PG&E urges Commission adoption of the PD consistent with the recommendations in PG&E's opening and reply comments.

Respectfully Submitted,

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By: _____ /s/
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