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

Application of Wilner & Associates for
Modification of D.06-07-027 and D.09-03-026

Application 11-01-002
(Filed January 5, 2011)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) PROTEST OF THE
ABOVE-CAPTIONED APPLICATION OF WILNER & ASSOCIATES**

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Dated: February 7, 2011

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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THE ABOVE-CAPTIONED APPLICATION WILNER & ASSOCIATES**

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission (“CPUC” or “Commission”) Rules of Practice and Procedure, Pacific Gas and Electric Company (“PG&E”) respectfully submits this Protest to the above-captioned Application filed by Wilner & Associates (“Wilner”).

II. DISCUSSION

In Application No. 11-01-002, Wilner requests that the Commission reopen Decisions D. 06-07-027 and D. 09-03-026 (involving PG&E's SmartMeter™ Project), stay the SmartMeter™ Project and review the alleged health effects of radio frequency ("RF") emissions, and the security of the SmartMeter™ remote disconnect functionality. Simultaneously with this Protest, PG&E has filed a motion to dismiss this Application on the following grounds:

- The Federal Communications Commission (FCC) regulates RF emissions and has promulgated strict standards establishing safe exposure levels;
- PG&E’s SmartMeters™ are certified by the FCC and SmartMeter™ exposure levels are well below FCC standards;
- the RF exposure from SmartMeters™ is minimal and much lower than many common household electronic devices;
- the weight of scientific evidence demonstrates there is no support for allegations of negative health effects caused by the low level SmartMeter™ exposure; and

- the Commission reviewed and approved the SmartMeter™ remote disconnect functionality.

Moreover, Wilner’s Application to Modify is fatally deficient because Wilner has not identified material new facts that would warrant modification of the Commission’s decisions authorizing PG&E’s SmartMeter™ deployment. CPUC Rule of Practice and Procedure 16.4 governing petitions for modification provides, in part, that:

- (b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The Commission has further clarified that the standard for revisiting and modifying final decisions pursuant to Rule 16.4 is a “persuasive indication of new facts or a major change in material circumstances.” (See, *Application of the Exposition Metro Line Construction Authority*, D.09-02-032, issued February 23, 2009). Wilner has not identified any such new facts.

PG&E requests that the Commission refrain from taking any action in this docket pending resolution of PG&E's Motion to Dismiss.

III. PROCEDURAL MATTERS

PG&E submits that any proceeding should be classified as quasi-legislative.

In PG&E's view it is premature for the Commission to consider a procedural schedule.

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IV. CONCLUSION

WHEREFORE, PG&E requests that the Commission first act on its concurrently filed Motion to Dismiss consistent with the comments set forth here.

Respectfully Submitted,

ANN H. KIM
CHONDA J. NWAMU

By: _____ /s/
CHONDA J. NWAMU

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DATED: February 7, 2011

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, Post Office Box 7442, San Francisco, CA 94120.

On the **February 7, 2011**, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) PROTEST OF THE ABOVE
CAPTIONED APPLICATION OF WILNER & ASSOCIATES**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for **A. 05-06-028, A.07-12-009 and A. 11-01-002** with an e-mail address.
- [XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for **A. 05-06-028, A.07-12-009 and A. 11-01-002** without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 7, 2011 at San Francisco, California.

/s/

MARY B. SPEARMAN