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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND  
ELECTRIC COMPANY (U-39-E) for  
Authority to Increase Revenue  
Requirements to Recover the Costs to  
Upgrade its SmartMeter™ Program

Application No. 07-12-009  
(Filed December 12, 2007)

**THE CITY AND COUNTY OF SAN FRANCISCO'S PETITION TO  
MODIFY DECISION 09-03-026 TO TEMPORARILY SUSPEND PACIFIC GAS  
AND ELECTRIC COMPANY'S INSTALLATION OF SMARTMETERS**

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## I. INTRODUCTION

The City and County of San Francisco (“City”) submits this petition to modify California Public Utilities Commission (“Commission”) Decision (“D.”) 09-03-026, in which the Commission granted the application of Pacific Gas and Electric Company (“PG&E”) to upgrade its SmartMeter Program.<sup>1</sup> The City requests an immediate suspension of PG&E’s further installation of SmartMeters until the Commission concludes its investigation into the significant problems created by PG&E’s deployment of its SmartMeters.<sup>2</sup> In view of the problems already known to the Commission, it is unreasonable for PG&E to simply continue installing SmartMeters as if nothing is wrong.

PG&E has now installed nearly 5.8 million SmartMeters throughout its service territory and plans to install another 3.9 million.<sup>3</sup> This means a significant number of additional customers will be exposed unnecessarily to the same problems with SmartMeters that have already harmed many of PG&E’s customers. As detailed below, there is substantial evidence that a disturbingly high number of the SmartMeters are unreliable. The Commission has received hundreds of complaints from PG&E customers concerning large increases in their electric bills following the installation of SmartMeters in their communities.

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<sup>1</sup> The City’s proposed modifications to the Ordering Paragraphs in Decision 09-03-026 are set forth in the attached appendix to this petition, as required by Commission Rule of Practice and Procedure 16.4(b).

<sup>2</sup> Along with this petition, the City is filing a motion for expedited treatment of the petition. As the City explains in this petition, there is good cause for the Commission to take immediate action to temporarily suspend PG&E’s deployment of its SmartMeters. *See pp. 8-9, infra.*

<sup>3</sup> PG&E’s SmartMeter Program Data, p.1 (6/8/2010). These figures include 69,215 “second generation” SmartMeters that PG&E installed to replace “first generation” SmartMeters. *Id.* PG&E appears to be referring to the Kern County retrofit. *See pp. 3-4, infra.*

The Commission is concerned enough about those complaints to have started an independent investigation of PG&E's SmartMeters and required PG&E to make its progress reports public.<sup>4</sup> And even though PG&E treated the SmartMeter problems as simply a public relations issue,<sup>5</sup> its own statements and documents indicate that there have been numerous problems with the meters that could affect the accuracy of their readings.<sup>6</sup> A significant number of SmartMeters remain to be installed in various cities and communities in PG&E's service territory, including in San Francisco, Santa Cruz, and San Rafael where PG&E plans to start deployment in July.<sup>7</sup> Prudence dictates that these further installations be postponed until the questions regarding the accuracy of the SmartMeters have been fully resolved.

Ensuring the accuracy of electric bills is a fundamental responsibility of PG&E and the Commission under California law.<sup>8</sup> Receiving a timely and correct bill from PG&E is *the least* a customer is entitled to expect. Customers should not be in the position of wondering whether their bills are accurate or whether the equipment installed by PG&E is working properly. The Commission is required to ensure that utility customers pay just and reasonable charges for electric service.

Until the Commission concludes its investigation, and determines that the problems with PG&E's SmartMeters have been resolved, the Commission cannot vouchsafe that bills based on SmartMeter readings are just and reasonable. Under these circumstances, the Commission should suspend the installation of SmartMeters in order to proactively protect consumers. When the investigation is completed, the Commission will have the information it needs to determine how and when PG&E should continue installing SmartMeters.

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<sup>4</sup> See pp. 8-9, *infra*.

<sup>5</sup> See pp. 6-7, *infra*.

<sup>6</sup> See pp. 4-7, *infra*.

<sup>7</sup> PG&E SmartMeter Report, p. 18 (April 28, 2010).

<sup>8</sup> See pp. 9-12, *infra*.

## **II. STATEMENT OF FACTS**

### **A. Overview of PG&E's SmartMeter Program**

PG&E's program to replace its electric meters has been costly and plagued with problems from its inception. In D.06-07-027, the Commission authorized PG&E to recover in rates up to \$1.7 billion to install an Advanced Metering Infrastructure ("AMI") system. Some 18 months later, PG&E filed the application in this proceeding, its second AMI application, seeking to "upgrade" its AMI system by spending another \$572 million on its SmartMeter program.<sup>9</sup> In D.09-03-026, the Commission authorized PG&E to spend another \$467 million on SmartMeter deployment.<sup>10</sup> Despite the expenditure of increasing sums of ratepayer money, problems with SmartMeters continue.

### **B. PG&E's Prior Deployment Problems with its AMI Program**

In its initial AMI application, PG&E asked the Commission for authority to deploy electromechanical meters, even though other electric utilities in California and throughout the United States were deploying solid state meters for their AMI programs. Upon receiving Commission approval, PG&E began deploying electromechanical AMI meters in Kern County. However, less than two years later, PG&E was back before the Commission seeking to replace those same electromechanical meters that it had just installed.<sup>11</sup>

Under the guise of an "upgrade," PG&E asked the Commission to approve an expenditure of nearly \$38 million to "retrofit" 230,000 electromechanical AMI meters procured for its Kern County customers (123,000 of which PG&E had already

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<sup>9</sup> TURN, the Division of Ratepayer Advocates, and the City opposed PG&E's upgrade application in part because PG&E seemed to be using it to mask significant problems with PG&E's initial deployment of AMI.

<sup>10</sup> D.09-03-026, at p. 148.

<sup>11</sup> See D.09-03-026, at pp. 17-18.

installed).<sup>12</sup> The Commission rejected that request in part, but still authorized PG&E to spend nearly \$19 million to retrofit the electromechanical AMI meters in Kern County.<sup>13</sup>

While this second application was pending, PG&E abandoned the installation of electromechanical meters and began to install solid state meters, even though: (i) the Commission had not approved PG&E's expenditures of ratepayer funds for that purpose; and (ii) the meters did not have the Home Area Network ("HAN") functionality that PG&E was asking the Commission to approve in this application.<sup>14</sup>

Because the newly installed solid state meters did not include the HAN functionality PG&E was seeking to deploy, PG&E then asked the Commission to approve an additional \$32 million to retrofit the nearly 288,000 solid state SmartMeters installed in Kern County to add the missing HAN capability. The Commission approved that request in large part.<sup>15</sup> These bad decisions by PG&E increased the cost to all of PG&E's ratepayers.<sup>16</sup>

### **C. PG&E's Present Deployment Problems with its SmartMeter Program**

Since the Commission's authorization in D.09-03-026, PG&E's deployment of SmartMeters has fared no better. Among the problems that PG&E has admitted to are the following:

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<sup>12</sup> See D.09-03-026, at p. 48.

<sup>13</sup> D.09-03-026, at p. 54.

<sup>14</sup> See D.09-03-026, at pp. 39-40.

<sup>15</sup> See D.09-03-026, at pp. 39-48. The Commission reduced the amount of PG&E's request by \$5.5 million (plus a 10% risk allowance) because the Commission found that "the magnitude of the retrofit cost estimate (\$32,026,000 plus a 10% risk based allowance) has not been fully supported and justified." *Id.* at 48.

<sup>16</sup> The City urges the Commission to examine the prudence of PG&E's ever-increasing costs of its SmartMeter program in an appropriate proceeding.

- PG&E had to replace nearly 45,000 meters – 23,200 that were installed incorrectly, 12,376 that had data storage issues, and 9,000 that had wireless transmission problems.<sup>17</sup>
- PG&E admits that less than 100% of its SmartMeters are accurate.<sup>18</sup> This means that tens of thousands of PG&E customers are getting inaccurate bills.
- Approximately 4% (13,674) of the Aclara SmartMeters installed by PG&E are expected to have “poor read performance.”<sup>19</sup>
- Based on “issues related to Aclara electric meter performance” PG&E had to “contain” its deployment of Aclara meters at 145,000.<sup>20</sup>
- Deployment delays due to Silver Spring Networks’s inability to provide a consistent supply of SmartMeters.<sup>21</sup>
- “[P]roduction performance problems” with Silver Spring Networks SmartMeters related to “[a]bility to read” the meters.<sup>22</sup>
- PG&E skipped approximately 12,000 meter installations between March 31 and May 20, 2009 based on interference with ground field interrupters (“GFI”). In buildings where a GFI is placed next to a Silver Spring Networks meter panel, PG&E determined that the SmartMeters could trip the GFI.<sup>23</sup>
- Silver Spring Networks found a problem with a component that could cause its meters to stop working. PG&E placed a “hold” on installing 340,000 meters that could be affected by this problem. As of March 2010, only 50,000 meters were removed from “hold” status.<sup>24</sup>

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<sup>17</sup> Baker, *PG&E SmartMeters’ problems, and how to fix them*, San Francisco Chronicle (May 31, 2010). The latest information available on PG&E’s website shows that there presently are 19,307 (.11%) installed SmartMeters that are not correctly either storing or communicating billing information. (PG&E’s SmartMeter Program Data, p. 2 (6/8/2010).) There are 12,826 installed SmartMeters with outstanding “Data Storage Issues” and 6,481 outstanding “Non-Communicating Meters.” These figures include 4,850 electric meters (.17%) and 1,631 gas meters (.06%). *Id.*

<sup>18</sup> PG&E SmartMeter Report, p. 12 (March 31, 2010).

<sup>19</sup> PG&E SmartMeter Report, p. 9 (June 19, 2009).

<sup>20</sup> PG&E SmartMeter Report, p. 10 (May 29, 2009).

<sup>21</sup> PG&E SmartMeter Report, p. 4 (February 20, 2009); PG&E SmartMeter Report, p. 4 (March 18, 2009).

<sup>22</sup> PG&E SmartMeter Report, p. 9 (November 18, 2008).

<sup>23</sup> PG&E SmartMeter Report, p. 9 (May 29, 2009).

<sup>24</sup> PG&E SmartMeter Report, p. 5 (March 31, 2010).

- PG&E returned 117,000 meters to another of its device manufacturers after the manufacturer found that some of the meters weren't storing or sending data properly.<sup>25</sup>

#### **D. PG&E's Deployment Delays**

PG&E has installed nearly six million SmartMeters through the first quarter of 2010 and continues to install hundreds of thousands of SmartMeters each month.<sup>26</sup>

Despite the large numbers of installations, PG&E's deployment is behind schedule. In addition to delinquent meter deliveries, PG&E admits that its actual deployment for 2010 is behind schedule for a host of reasons, including:

- "Potential endpoint deployment slowdown" due to a "meter capacity" problem at Silver Springs Networks.<sup>27</sup>
- "Increased resources and cost of activities related to litigation support, independent testing and CPUC responses."<sup>28</sup>
- "IT-enabled business capability implementations need to be aligned with vendor software and equipment delivery."<sup>29</sup>
- "Need to improve timeliness on resolution of operational data collection performance issues."<sup>30</sup>
- "Non-standard installations may impact deployment cost and schedule."<sup>31</sup>

#### **E. PG&E's Response to SmartMeter Deployment Problems**

After PG&E's customers first started questioning their bills from their SmartMeters, and the press started covering PG&E's deployment problems, PG&E's initial response was to blame the increased bills on "rate hikes, increased usage due to weather, changes in lifestyle, aging appliances that draw more power, house guests."<sup>32</sup>

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<sup>25</sup> Baker, *Reports Shed Light on PG&E's digital meters*, San Francisco Chronicle (May 11, 2010).

<sup>26</sup> PG&E SmartMeter Report, p. 7 (April 28, 2010).

<sup>27</sup> PG&E SmartMeter Report, p. 10 (March 31, 2010).

<sup>28</sup> PG&E SmartMeter Report, p. 10 (March 31, 2010).

<sup>29</sup> PG&E SmartMeter Report, p. 10 (March 31, 2010).

<sup>30</sup> PG&E SmartMeter Report, p. 10 (March 31, 2010).

<sup>31</sup> PG&E SmartMeter Report, p. 11 (March 31, 2010).

<sup>32</sup> Hull, *Complaints grow about PG&E SmartMeters*, San Jose Mercury News (November 16, 2009).



Those statements did nothing to either allay customer concerns or prevent additional negative coverage from the press.

Because PG&E denied that there were any problems with the SmartMeters, it approached these consumer concerns as a public relations problem. Late last year, PG&E established a “cross-departmental oversight committee made up of Officers and Senior Directors” to address the increasing “[n]egative SmartMeter press” and customer complaints.<sup>33</sup> Focusing on its treatment in the press, rather than addressing whether the complaints were grounded in fact, PG&E began to host a series of town meetings and train its “Answer Center” employees to “assist customers with inquiries related to their billing and SmartMeter technology.”<sup>34</sup> PG&E also began meeting with the press and using its website and the Internet to provide customer information:

Enhanced content on [www.pge.com/smartmeter](http://www.pge.com/smartmeter) to make information about the SmartMeter™ program more customer focused, more easily understood and more accessible. Proactive media outreach has been completed through several editorial board visits. . . . Created two new social media channels, on Twitter and Facebook, to share information with customers.<sup>35</sup>

By February 2010, having approved a “Customer Outreach plan,” PG&E treated the issue of the increased complaints as “closed.”<sup>36</sup> This response was entirely inadequate given the serious nature of the complaints. While it is important to have well-informed customer service representatives to assist customers who contact the utility, it is not a substitute for correcting the serious flaws of the actual SmartMeter devices and installation program. This is simply one more reason why Commission action is warranted at this time.

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<sup>33</sup> PG&E SmartMeter Report, p. 10 (October 14, 2009).

<sup>34</sup> PG&E SmartMeter Report, p. 10 (October 14, 2009).

<sup>35</sup> PG&E SmartMeter Report, p. 10 (December 18, 2009).

<sup>36</sup> PG&E SmartMeter Report, p. 10 (February 23, 2010).

**III. THE COMMISSION SHOULD MODIFY DECISION 09-03-026 BY TEMPORARILY SUSPENDING PG&E'S SMARTMETER DEPLOYMENT.**

**A. There is Good Cause for the Commission to Modify Decision 09-03-026**

The Commission and PG&E have received thousands of complaints from PG&E customers concerning large increases in their electric bills following the installation of SmartMeters in their communities. Local media in many in cities and counties where PG&E has deployed its SmartMeters have reported numerous instances in which customer bills have skyrocketed after a SmartMeter was installed.<sup>37</sup>

To its credit, the Commission has not just stood still in the face of these complaints. The Commission has taken two important steps. First, the Commission hired a consultant to conduct an evaluation of PG&E's SmartMeter program.<sup>38</sup> By doing so, the Commission will be able to make a reasoned decision concerning the cause of the deployment problems and to determine whether further Commission action is necessary. Second, the Commission required PG&E to release to the public its reports to the Commission about the SmartMeter program.<sup>39</sup> This action by the Commission has already done exactly what the Commission intended – provided information that verifies anecdotal evidence of meter problems.

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<sup>37</sup> See <http://abclocal.go.com/kfsn/story?section=news/local&id=7069123> (San Francisco) (Feb. 26, 2010);  
<http://abclocal.go.com/kfsn/story?section=news/local&id=7069123> (Fresno) (Oct. 17, 2009);  
[http://www.mercurynews.com/ci\\_13801866?source=pkg&nclick\\_check=1](http://www.mercurynews.com/ci_13801866?source=pkg&nclick_check=1) (San Jose) (Nov. 16, 2009);  
<http://www.kget.com/mostpopular/story/PG-E-customers-in-Bay-Area-voice-similar/kCPCR7ffwki609ty-9Nupg.csp> (Kern County, CA) (Nov. 18, 2009)  
[http://www.losaltosonline.com/index.php?option=com\\_content&task=view&id=20453&Itemid=46](http://www.losaltosonline.com/index.php?option=com_content&task=view&id=20453&Itemid=46) (Los Altos) (Feb. 2, 2010).

<sup>38</sup> Application 00-12-020, *Assigned Commissioner's Ruling Regarding Consultant Costs Related to Commission's Evaluation of PG&E's SmartMeter Program* (February 2, 2010).

<sup>39</sup> Application 06-06-028, *Assigned Commissioner's Ruling Reopening Proceeding, Requiring that Reports be Filed in this Proceeding, and Order Pacific Gas and Electric Company to Release Prior Reports and Future Reports to the Public* (May 4, 2010).

The Commission now must take the next step necessary to protect PG&E's customers. PG&E's SmartMeter deployment will continue unabated unless the Commission takes action, and problems associated with SmartMeters will continue. Additional PG&E customers in San Francisco and other counties should not be forced to bear the risk of excessive bills that has followed PG&E in every county where it has deployed SmartMeters. Given that PG&E still intends to install nearly 4 million SmartMeters, the Commission has the opportunity to proactively protect consumer interests. The Commission can then determine a permanent course of action once the investigation is complete.

**B. A Temporary Suspension Is Consistent with the Commission's Authority and Obligation under the Public Utilities Code and Commission Precedent**

There is ample authority under the Public Utilities Code for the Commission to grant the City's petition to modify and impose a temporary suspension. Public Utilities Code § 451 provides that "[a]ll charges demanded or received by any public utility . . . for any product or commodity furnished . . . shall be just and reasonable." Section 451 further states that "[e]very unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful."

Given the admitted problems with SmartMeters that call into question the accuracy of significant numbers of bills, neither PG&E nor the Commission can now affirm that all charges demanded by PG&E based on SmartMeter readings are accurate and reasonable. By definition, a bill that charges a customer for too much electricity based on a defective meter reading is unjust and unreasonable and therefore unlawful under § 451.

Moreover, § 451 requires the Commission to ensure that "every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities ... as necessary to promote the safety, health,

comfort, and convenience of its patrons.” Unfortunately, the unresolved problems with SmartMeters render them inadequate and unreasonable for their intended task – providing reliable readings of electricity usage. These questions about SmartMeters pose a tremendous inconvenience to customers who must wonder whether their bills are accurate and who have no reliable way to answer that question. Section 451 requires that the Commission ensure that customers are not put to such anxiety and inconvenience based on faulty utility equipment.

Since the Commission issued D.09-03-026, there has been increasing public dissatisfaction regarding PG&E’s use of SmartMeters. State lawmakers have held hearings on SmartMeters,<sup>40</sup> consumers have voiced concern and distrust regarding abnormally high bills, and TURN and various public entities have urged the Commission to impose a moratorium on future installations.<sup>41</sup> Senator Dean Florez has called upon the Commission to impose a moratorium,<sup>42</sup> and the San Francisco Board of Supervisors recently passed a resolution supporting a moratorium on new installations.<sup>43</sup>

By instituting its own investigation, the Commission already has acknowledged the necessity of a close examination of whether PG&E has complied with its requirement to supply adequate, efficient, just, and reasonable equipment to its customers. Consistent with this statutory mandate, and in light of the Commission’s pending investigation, the Commission should issue a temporary suspension of SmartMeter deployment.

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<sup>40</sup> See <http://abcnews.go.com/Business/wireStory?id=10481874>.

<sup>41</sup> The City is aware that the City of Fairfax, City of Cotati, and the Camp Meeker Recreation and Parks District have sent the Commission letters requesting a moratorium.

<sup>42</sup> See <http://www.bakersfield.com/news/business/economy/x173373797/PG-E-reports-discuss-SmartMeter-problems>.

<sup>43</sup> Resolution 247-10, Resolution Supporting Outreach and Education Regarding Smart Meters to Prevent Power Service Disconnections. Available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions10/r0247-10.pdf>.

Additionally, under Public Utilities Code § 1708, the Commission may “rescind, alter, or amend any order or decision made by it.”<sup>44</sup> As the Commission has recognized, it is appropriate to stay a decision that results in confusion or uncertainty, pending Commission resolution of those issues.<sup>45</sup>

Recently, the Commission relied on this rationale to issue a stay *on the Commission’s own motion* of its decision authorizing the use of tradable renewable energy credits for compliance with the renewables portfolio standard program.<sup>46</sup> One of the Commission’s justifications for that stay was to reduce uncertainty while Commission reconsideration of the decision was pending.<sup>47</sup>

Likewise, here it is appropriate to temporarily stay the further deployment of SmartMeters to reduce uncertainty, given PG&E’s difficulties in rolling out the SmartMeters, public dissatisfaction, the Commission’s own investigation, and the risk of harm to the public. It would be hard to identify instances of greater customer confusion and uncertainty than that caused by the installation of SmartMeters. It is also clear that this unfortunate situation will continue until the Commission’s investigation is completed. Whether through defective meters, installation, or otherwise, no additional customers should be subjected to the risks and confusion created by SmartMeter installation.

Where, as here, there is an admission that some SmartMeters are defective, and there is a pending Commission investigation, individual customers should not bear the burden of first determining whether or not the bills are disproportionate, and then proving

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<sup>44</sup> Public Utilities Code § 1708.

<sup>45</sup> See D.04-04-018, *In the Matter of the Application of Southern California Water Company (U 133-W), for an Order Authorizing it to Increase Rates for Water Service*, 2004 Cal. PUC LEXIS 113 (April 1, 2004).

<sup>46</sup> D.10-05-018, *Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program* (May 6, 2010) (staying D.10-03-021).

<sup>47</sup> *Id.* at 5.

that fact to PG&E. The Commission can reduce the complexity and number of likely complaints by issuing the temporary suspension pending the outcome of the investigation.<sup>48</sup>

Finally, under State law the Commission “may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”<sup>49</sup> This provides the Commission with ample authority to temporarily suspend PG&E’s SmartMeter deployment.

**C. A Temporary Suspension Will Not Have a Negative Impact on PG&E’s Realization of Demand Response and Energy Conservation Benefits**

The Commission approved PG&E’s SmartMeter application in part because PG&E claimed that the additional \$749 million in costs (PVRR<sup>50</sup>) were justified by benefits of more than \$615 million (PVRR) in energy demand response and energy conservation benefits from the SmartMeter upgrade.<sup>51</sup> There is no evidence, however, that the temporary suspension requested herein will impact PG&E’s realization of these benefits.

PG&E has already forecasted that its 2007-2010 energy conservation benefits will not meet the “commitments” it made to the Commission.<sup>52</sup> The inevitability of this shortfall is evident in PG&E’s May 27, 2010 compliance filing with the

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<sup>48</sup> In fact, there is a pending class action lawsuit concerning SmartMeters. See *Flores v. PG&E* (S-1500-CV268647) filed in Kern County Superior Court. The case was stayed on February 19, 2010. A case management conference scheduled for April 23, 2010 was continued to August 27, 2010, pending release of The Structure Group’s report.

<sup>49</sup> Public Utilities Code § 701.

<sup>50</sup> PVRR means “present value revenue requirement.”

<sup>51</sup> See D.09-03-026, pp. 148-50.

<sup>52</sup> PG&E SmartMeter Report, p. 10 (March 18, 2009).

Commission in this proceeding.<sup>53</sup> In that filing, PG&E informed the Commission that its demand response benefits from the 6 million installed SmartMeters are virtually nil:

- Programmable Communicating Thermostat Benefits – 0 customers; 0 benefits
- Peak Time Rebate Benefits – 0 customers; 0 benefits
- Time of Use Benefits - 0 customers; 0 benefits
- SmartRate/Peak Day Pricing Benefits - 25,500 customers; \$664,000 in benefits.<sup>54</sup>

PG&E also informed the Commission that it had yet to accrue any energy conservation benefits:

- Web presentment of Interval Data – 0 customers; 0 benefits
- Home Area Network – 0 customers; 0 benefits
- Tier Notification Program – 0 customers; 0 benefits.<sup>55</sup>

Furthermore, in its monthly reports to the Commission PG&E has identified a number of problems that will likely further delay realization of energy conservation/demand response benefits. These problems include:

- “Delivered SmartMeter products do not meet PG&E quality standards.”<sup>56</sup>
- “Need to improve timeliness on resolution of operational data collection performance issues.”<sup>57</sup>
- “IT Systems may not be able to handle projected volumes.”<sup>58</sup>
- “IT-enabled business capability implementations need to be aligned with vendor software and equipment delivery.”<sup>59</sup>

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<sup>53</sup> Compliance Filing of Pacific Gas and Electric Company Pursuant to Decision 09-03-026 (May 27, 2010).

<sup>54</sup> *Id.* at p. 16.

<sup>55</sup> *Id.* at p. 17.

<sup>56</sup> PG&E SmartMeter Report, p. 10 (January 27, 2009).

<sup>57</sup> PG&E SmartMeter Report, p. 10 (March 31, 2010).

<sup>58</sup> PG&E SmartMeter Report, p. 11 (March 31, 2010).

<sup>59</sup> PG&E SmartMeter Report, p. 10 (March 31, 2010).

In the absence of any benefits being accrued, the Commission's temporary suspension of PG&E's SmartMeter deployment will not prejudice PG&E from recouping those same benefits. Put differently, PG&E cannot be prejudiced by a delay in accruing nonexistent benefits.

**D. Any Prejudice to PG&E from a Temporary Suspension Is Outweighed by the Need to Ensure that PG&E's SmartMeters Are Functioning Properly**

PG&E will not be prejudiced by the moratorium. As demonstrated above, significant delays and cost increases have been hallmarks of the SmartMeter program since its inception. Moreover, any delays or costs caused by a temporary suspension are outweighed by the benefits of a thorough investigation into the problems of SmartMeters. The Commission should not expose more customers to faulty SmartMeters out of a desire to avoid delays in the deployment schedule. As noted above, there have been many delays in this program already and nothing is to be gained from installing more faulty meters that must be replaced later.<sup>60</sup>

More importantly, any delay is justified by the need for accuracy. The Commission has already begun an investigation into PG&E's deployment of its SmartMeter system. The Commission's outside consultant, The Structure Group, is now collecting and examining data to determine whether the SmartMeter system is measuring, collecting, and billing electric usage accurately. The Commission expects The Structure Group to provide its evaluation to the Commission by the end of this summer. For this reason, the Commission's temporary suspension will not be open ended and may not last more than a few months.

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<sup>60</sup> See pp. 3-7, *supra*.



### **E. The City's Petition for Modification Is Timely**

A petition to modify is the proper vehicle for a party to ask the Commission to make changes to a decision.<sup>61</sup> Generally, a petition to modify must be brought within one year of the effective date of the decision proposed to be modified.<sup>62</sup> If a party seeks to modify a decision more than one year after the effective date of the decision proposed to be modified the party “must explain why the petition could not have been presented within one year of the effective date of the decision.”<sup>63</sup>

Decision 09-03-026 was issued on March 12, 2009. The City could not have filed this petition within one year of that decision because the evidence supporting the City's petition only became available to the public recently. While there have been claims of unfairly increased bills following the installation of SmartMeters for some time, these anecdotal accounts were only recently substantiated by PG&E's own reports. Furthermore, despite these complaints, PG&E continued to insist that the SmartMeters were functioning properly and the increased bills were due to rate increases. The City had no evidence to show that PG&E's assertions were untrue.

The reports made available to the public by PG&E on May 10, 2010, provide a strong basis for the Commission to take action. Now that PG&E has admitted that there have been numerous problems with its deployment of SmartMeters,<sup>64</sup> there is good cause for the Commission to modify D.09-03-026 by temporarily suspending future installations pending the completion of the Commission's investigation.

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<sup>61</sup> Commission Rule of Practice and Procedure 16.4(a); D.09-03-037, *In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land*, 2009 Cal. PUC LEXIS 176, p. \*4 (March 27, 2009).

<sup>62</sup> Commission Rule of Practice and Procedure 16.4(e).

<sup>63</sup> Commission Rule of Practice and Procedure 16.4(e).

<sup>64</sup> *See generally Baker, Reports Shed Light on PG&E's digital meters*, San Francisco Chronicle (May 11, 2010); *see also* pp. 3-7, *supra*.

**IV. CONCLUSION**

For the reasons stated above, the Commission should grant the City's petition to modify Decision 09-03-26 by temporarily suspending PG&E's deployment of its SmartMeters.

Dated: June 17, 2010

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## APPENDIX

### PROPOSED MODIFICATIONS TO ORDERING PARAGRAPHS IN DECISION 09-030-026

The City and County of San Francisco proposes that the following language be added to Ordering Paragraph 1 of Decision 09-03-026:

1. Pacific Gas and Electric Company (PG&E) is authorized to proceed with the proposed SmartMeter Upgrade, subject to the conditions and costs specified in this decision. Notwithstanding the foregoing, as of June \_\_\_\_, 2010, the Commission temporarily suspends PG&E's deployment of endpoints for its SmartMeter Program. This suspension shall remain in effect until further order of the Commission upon motion of PG&E. PG&E may file a motion to end the suspension no sooner than 15 days after the Commission has received a report from its independent evaluator The Structure Group.

**CERTIFICATE OF SERVICE**

I, **PAULA FERNANDEZ**, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4623.

On June 17, 2010, I served **THE CITY AND COUNTY OF SAN FRANCISCO'S PETITION TO MODIFY DECISION 09-03-026 TO TEMPORARILY SUSPEND PACIFIC GAS AND ELECTRIC COMPANY'S INSTALLATION OF SMARTMETERS** by electronic mail on the CPUC Service List, Proceeding No. A0712009.

The following addressee(s) without an email address were served:

- BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

Larry Nixon  
Pacific Gas and Electric Company  
77 Beale Street, MC B10A  
San Francisco, CA 94105

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 17, 2010, at San Francisco, California.

\_\_\_\_\_  
/s/  
**PAULA FERNANDEZ**