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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of CAlifornians for Renewable Energy, Inc. (CARE) to modify Decision 06-07-027	Application 10-09-012 (Filed September 20, 2010)

Reply to Protest of PG&E and Response of DRA to Application 10-09-012

Pursuant to Rule 2.6 (e)[1] of the California Public Utilities Commission ("Commission" or "CPUC") Rules of Practice and Procedure, CAlifornians for Renewable Energy, Inc. (CARE) respectfully replies to the October 25, 2010 protest of Pacific Gas and Electric Company (PG&E) and the October 20, 2010 response of the Division of Ratepayers Advocates to CARE's Application 10-09-012.

Introduction

CARE seeks expedited review not unsupported procedural motions by PG&E in these matters of concern with the health and welfare of the public who lack the ability currently to choose whether or not they want to be part of PG&E's SmartMeter™ system which CARE contends PG&E failed to "register its SmartMeters™ system with the Communications Division of the CPUC and FCC as an eligible telecommunication carrier (ETC) prior to beginning operation of its wireless telecommunications system to interconnect its Smart Meters in to a wide area network (WAN)".[2] Therefore PG&E's SmartMeter™ system is being operated as an unlicensed ETC. How then can the

[1] 2.6 (e) An applicant may file replies to protests and responses within 10 days of the last day for filing protests and responses, unless the Administrative Law Judge sets a different date. Replies must be served on all protestants, all parties tendering responses, and the assigned Administrative Law Judge.

Note: Authority cited: Section 1701, Public Utilities Code; and Section 2, Article XII, California Constitution. Reference: Section 1701, Public Utilities Code.

[2] See CARE's October 13, 2010 attachment to *Ex Parte* http://docs.cpuc.ca.gov/efile/EXP/125182.pdf at 4

Commission determine if SmartMeter™ system is safe for customers without some sort of assessment of the risks associated with operating an unlicensed ETC?

PG&E's Protest

Essentially PG&E's Protest to Application 10-09-012 rests on the false premise that CPUC lacks any jurisdictional authority over RF emissions from PG&E's SmartMeter™ system and the field therefore is pre-empted by the Federal Communications Commission (FCC) somehow without providing any factual basis[3] to its contention.

PG&E's Protest at page 1 state:

> In Application No. 10-09-012, CARE requests that the Commission reopen Decision (D.) 06-07-027 (involving PG&E's SmartMeter™ Project), stay the SmartMeter™ Project and conduct a California Environmental Quality Analysis on harmful interference and the health effects of radio frequency ("RF") emissions. Simultaneously with this Protest, PG&E has filed a motion to dismiss this Application on the grounds that the field of RF emissions is pre-empted by federal law. As discussed therein, the Commission previously has determined that it does not have the power to regulate RF emissions levels and the health and safety effects of RF emissions. Further, CARE has acknowledged the FCC's jurisdiction over RF emissions levels by filing a Complaint at the FCC against PG&E and the CPUC. (See CAlifornians for Renewable Energy, Inc. v. Pacific Gas and Electric Company and California Public Utilities Commission. Complaint 10-C00246969, filed September 15, 2010) (Attachment A).

[3] In fact PG&E's Attachment B, the FCC letter addressed to Ms. Cindy Sage responding to concerns about heath and safety impact from SmartMeter™ RF emissions, dated August 6, 2010 provides no such support to PG&E's contention since FCC regulation 47 CFR 15.5 b) doesn't establish any specific threshold for "SmartMeter RF emissions and customer exposure levels".

Regarding whether or not, as PG&E falsely claims, that CARE's Application for Modification should be dismissed "on the grounds that the field of RF emissions is pre-empted by federal law" just the opposite is true in fact as demonstrated by the response received from the amended complaint CARE filed with the FCC on October 13, 2010 which CARE provided as an attachment to an *Ex Parte* communication to the Commission that day.[4]

Not knowing at the time it was filed that CPUC had jurisdictional authority also on October 13, 2010 CARE amended the complaint to the FCC [see Attachment A] requesting the following additional relief from the FCC:

> Because CPUC allowed PG&E to operate a wireless telecommunications system to interconnect its Smart Meters in to a wide area network (WAN) before registering its system with the CPUC and FCC as an eligible telecommunication carrier (ETC) first, therefore CARE asks for the following additional FCC relief to be provided.
>
> 1. That FCC review the effectiveness of CPUC's Wireless Identification Registration program for compliance with the February 2006 the Federal Communications Commission issued Report and Order (FCC 05-46) in the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45) encouraging states to adopt additional requirements for eligible telecommunication carrier (ETC) designations and strengthen reporting requirements for ETCs "in order to ensure that high-cost universal service support continues to be used for its intended purposes."
> 2. The FCC and CPUC jointly investigate why PG&E was allowed to operate a wireless telecommunications system to

[4] http://docs.cpuc.ca.gov/efile/EXP/125182.pdf

interconnect its Smart Meters in to a wide area network (WAN) before registering its SmartMeters™ system with the CPUC and FCC as an eligible telecommunication carrier (ETC) first.

3. That the FCC and CPUC work jointly to modify the CPUC Regulations to insure full compliance with *all* applicable FCC Orders including but not limited Order (FCC 05-46), and that upon completion of the investigations and regulation modifications that FCC certify that CPUC's regulatory program is effective to establish compliance.

The amended Complaint 10-C00246969 filed with the FCC on October 13, 2010 at page 3 lays out the CPUC's jurisdictional authority in the field that PG&E's Protest demonstrates it wasn't even aware of.

> In February 2006 the Federal Communications Commission issued Report and Order (FCC 05-46) in the Matter of Federal-State Joint Board on Universal Service (FCC Docket No. 96-45) encouraging states to adopt additional requirements for eligible telecommunication carrier (ETC) designations and strengthen reporting requirements for ETCs "in order to ensure that high-cost universal service support continues to be used for its intended purposes." CPUC Resolution T-17002[5] amended the procedures and guidelines for ETCs designation set forth by the Commission in Resolution T-16086 and revised the reporting requirements for ETCs eligible to receive federal high-cost support adopted in Resolution T-16830 dated May 6, 2004. Resolutions T-16086 and T-16830 were superseded by this Resolution as of July 1, 2006. The Comprehensive Procedures and Guidelines for ETC Designation, is attached as Appendix A, and the Comprehensive Reporting Requirements for ETCs Eligible to Receive Federal High-Cost Support, attached as Appendix B, also where adopted and took effect on July 1, 2006.

[5] See http://docs.cpuc.ca.gov/published/FINAL_RESOLUTION/56844.htm at 1.

> Under Appendix A[6], and the *Comprehensive Reporting Requirements for ETCs* it states "Each telecommunications carrier seeking eligible telecommunications carrier designation must file an advice letter with the Commission with the following information: Section I – Compliance with FCC 97-157, A) The service areas for which the carrier is requesting ETC designation including a List of Geographic Service Areas and a map in .shp format showing the proposed service area. *For wireless petitioners, the map should identify the location of cell sites and shade the area where the carrier provides commercial mobile radio service or similar service*." [*Emphasis* added]
>
> CPUC Decision 94-10-031, (issued on October 12, 1994) established a wireless registration process for all Commercial Mobile Radiotelephone Services (CMRS) providers within California.

CARE goes on to state at page 4:

> We allege [] information should have been filed by PG&E to register its SmartMeters™ system with the Communications Division of the CPUC and FCC as an eligible telecommunication carrier (ETC) prior to beginning operation of its wireless telecommunications system to interconnect its Smart Meters in to a wide area network (WAN) and PG&E failed to do so. Service shouldn't have commenced until PG&E receiving the WIR number from the CPUC. The CPUC provides a listing of current registered ETCs[7] and PG&E is not listed as registered therein.

The letter of response received from FCC on October 25, 2010 by US Mail clearly states CPUC not FCC has jurisdiction over the matters in CARE's FCC Complaint 10-C00246969. The FCC's letter signed October 20, 2010 and postmarked October 22, 2010 is provided as separate attachment B to this response.

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[6] *Id* at 12.
[7] See http://delaps1.cpuc.ca.gov/pls/public_cpuc/f?p=102:1:1246267722139297

DRA's Response

CARE appreciates the intent of the Division of Ratepayers Advocate's (DRA's) response to CARE's application and seeks to clarify and correct any issues in DRA comments where there might be a discrepancy with CARE's intentions in bringing its application to modify.

DRA is correct that in its Application, "CARE states that *although review of PG&E's AMI project under the California Environmental Quality Act (CEQA) is not required, the Commission has the discretion to require a CEQA analysis*, and should order PG&E to conduct one. In support of this request, CARE points to the following new developments: the Commission has received over 1300 electric SmartMeter complaints from PG&E customers, and CARE has filed a complaint against both the Commission and PG&E with the Federal Communications Commission (FCC) alleging that electromagnetic radiation (EMR) from PG&E's SmartMeters "created the ignition source" for the San Bruno gas pipeline explosion and that PG&E's SmartMeter installations are in violation of FCC regulation 47 CFR 15.5" therefore.

DRA admits "CARE may be correct that a case could be made for environmental review under CEQA, but CARE has not made that case… Given this, DRA does not support CARE's request for CEQA review on the basis of this Application." Maybe not or maybe so or maybe the correct basis for hearing the application is "the Commission has the primary authority and responsibility to protect the health and welfare of California residents by ensuring that public utility service is safe and reliable. See, e.g., Public Utilities Code §§ 45113, 76114, 76215, and 768.16" as DRA identified in its response. [DRA response at 4 to 5] CARE does not claim to know the best answer for

under what statutory authority the Commission should exercise appropriate precautionary authority to contain risk of harm to the public as CARE envisioned in this application.

CARE is neutral on the statutory basis for conducting the investigation but agrees with DRA "[t]here is clearly a high level of public concern over possible adverse safety and health impacts of the SmartMeter system. The Commission has an obligation to investigate whether these concerns are well founded, *in a public proceeding*." [DRA response at 5]

The purpose of CARE's application is to provide just such "a public proceeding". It is not CARE's intent to argue the statutory basis for the requirements to conduct a CEQA review at this juncture just to offer that up as a procedural mechanism to conduct an analysis of the environmental and health and safety impacts of the current SmartMeter™ system PG&E has already deployed to insure it doesn't cause harm to customers and to investigate if the operation of the SmartMeters™ system PG&E deployed in the San Bruno neighborhood where PG&E's natural gas pipeline exploded was involved some how in creating an ignition source for that explosion to occur.

Recognizing that pursuant FCC regulation 47CFR15.5 b)[8] "operation of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused" doesn't establish any specific threshold for "SmartMeter RF emissions and customer exposure levels"[9] that cause this harm it would be well within reasonable precaution for the Commission to follow DRA's recommendations in this

[8]CARE presumes now that CPUC maintains jurisdictional authority over 47CFR15.5 b)"Operation of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused and that interference must be accepted that may be caused by the operation of an authorized radio station, by another intentional or unintentional radiator, by industrial, scientific and medical (ISM) equipment, or by an incidental radiator".

[9] That DRA's response requests the Commission investigate.

proceeding that a) PG&E should be ordered to quantify SmartMeter RF emissions and customer exposure levels, b) the Commission should direct PG&E to explain what safety precautions it took in close proximity to natural gas equipment., and c) the Commission should review SmartMeter customer complaints to determine the prevalence and magnitude of interference from Smart Meters deploying SmartMeter equipment in close proximity to natural gas equipment.

Additionally CARE seeks to quantify if in fact PG&E's SmartMeters "created the ignition source" for the San Bruno gas pipeline explosion and that PG&E's SmartMeter installations are in violation of FCC regulation 47 CFR 15.5 therefore.

Conclusion

Based on the news reports included in CARE's *Ex Parte* communications in this Application we all know now that there was a power failure to the cathodic protection system connected to the San Bruno natural gas pipeline that exploded. This meant that any SmartMeter devices connected electrically to the gas main would have been in an ungrounded (floating) electrical state.

Until such time as PG&E publicly discloses its SmartMeter network telecommunication data including meter readings taken by its meters within the San Bruno neighborhood where PG&E's gas main exploded [before and after] we may never know if in fact PG&E's SmartMeters "created the ignition source" for the San Bruno gas pipeline explosion and that PG&E's SmartMeter installations are in violation of FCC regulation 47 CFR 15.5 therefore; since that certainly would constitute "harmful interference" within that regulation broad definition.

There is no disputing the fact that CPUC not FCC has jurisdiction over the subject matters in CARE's FCC Complaint 10-C00246969 and therefore CARE's Application 10-09-012 is properly before the Commission at this time. Therefore for good cause shown CARE respectfully requests that the Commission deny the protest of Pacific Gas and Electric Company (PG&E) and the Motion of PG&E to dismiss Application 10-09-012 and waste no further Commission resources on procedural matters that are unnecessary.[10]

Further CARE respectfully requests PG&E provide its future pleadings in Application 10-09-012 in a searchable adobe PDF format.

Respectfully submitted,

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October 25th, 2010

[10] In the absence of the Commission grant of denial of the motion to dismiss, CARE will respond to PG&E's motion pursuant to Rule 11.1 (e) as specified.

Attachment A

October 13, 2010 CARE amended the complaint to the FCC

This is a separate Attachment

Attachment B

FCC letter signed October 20, 2010 stating CPUC not FCC has jurisdiction over the matters in CARE's FCC Complaint 10-C00246969

This is a separate Attachment

Verification

I am an officer of the Applicant Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except 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 25th day of October 2010, at San Francisco, California.

Lynne Brown

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Lynne Brown Vice-President
CAlifornians for Renewable Energy, Inc. (CARE)

Certificate of Service

I hereby certify that I have this day served the foregoing document "*Reply to Protest of PG&E and Response of DRA to Application 10-09-012 of CAlifornians for Renewable Energy, Inc. (CARE)*" under CPUC Application 10-09-012. Each person designated on the official service list, has been provided a copy via e-mail, to all persons on the attached service list on October 25, 2010, for the proceedings, Application 10-09-012, with a copy to the A05-06-028 Service List, transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

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

Executed on this 25th day of October 2010, at Soquel, California.

Michael E. Boyd

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