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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications. (U39M)	Application 11-03-014 (Filed March 24, 2011)

ASSIGNED COMMISSIONER RULING AND SCOPING MEMO

Summary

Pursuant to Article 7 of the Commission's Rules of Practice and Procedure (Rules), this Ruling and Scoping Memo sets forth the procedural schedule and issues to be addressed, designates the presiding officer, and addresses other procedural issues which will facilitate the efficient processing of the proceeding.

Procedural Background

In 2002, the Commission directed utilities to explore advanced metering systems (AMI) to offer customers improved options to reduce energy usage during high demand periods. In response to this directive, Pacific Gas and Electric Company (PG&E) applied for approval to install AMI technologies on electric and gas meters. The Commission approved PG&E's AMI project in Decision (D.) 06-07-027.

Later, PG&E applied to upgrade its AMI technology with second-generation SmartMeters. The Commission approved PG&E's upgrade on

March 13, 2009, in D.09-03-026. The second-generation AMI technology relies upon wireless radio frequency (RF) signals.

On March 10, 2011, during the Commission's Public Business Meeting Commission President Michael Peevey noted that some PG&E customers have expressed concern about the RF signals from PG&E's SmartMeter technology. Commissioner Peevey responded to these concerns by directing PG&E on behalf of the Commission to "prepare a proposal for Commission consideration that will allow some form of opt-out for customers who object to these devices at reasonable cost, to be paid by the customers who choose to opt-out."

On March 24, 2011, PG&E filed Application (A.) 11-03-014 for Commission approval of modifications to its SmartMeter Program, and an increase in revenue requirements to recover the costs of the modifications. PG&E estimates that the modification costs are approximately $38 million in capital costs and $75 million in expenses, or about $84.4 million for the two-year period 2012-2013.

On April 25, 2011, protests were received from the Division of Ratepayer Advocates, Alameda County Residents Concerned About Smart Meters, The Town of Fairfax, the Alliance For Human and Environmental Health, and the County of Marin (Joint Protestants),[1] Wilner and Associates, The County of Lake, EMF Safety Network, Aglet Consumer Alliance, The County of Mendocino, The Utility Reform Network, and Ecological Options Network.

On May 6, 2011, a Prehearing Conference (PHC) was held before assigned Administrative Law Judge (ALJ) Bruce DeBerry to determine parties, identify

[1] The Town of Fairfax and the Alliance for Human and Environmental Health also filed a Motion to add the County of Marin as a protesting party. That motion is unopposed and is granted.

issues, discuss the need for evidentiary hearings, and address other matters as necessary to proceed with this application.

Issues

PG&E's application requests approval to implement modifications to its current SmartMeter Program, and the associated costs of these modifications. Some parties request that resolution of the application include studies associated with the actual SmartMeter technology and potential health effects. In D.06-07-027 and D.09-03-026 the Commission addressed PG&E's SmartMeter Program, but did not include such health studies in the scope of these proceedings. In D.10-12-001 the Commission determined that PG&E's SmartMeter technology complied with Federal Communications Commission requirements.[2] Embarking on resolving this issue at this time would greatly delay addressing PG&E's application and also delay implementation of a reasonable opt-out program. Thus the first phase of this proceeding is to address those issues which are included in PG&E's request. These issues are:

1. Whether PG&E's proposed Opt-Out program is a reasonable solution as an alternative to those customers who choose not to have a SmartMeter capable of RF transmission. Parties may recommend other reasonable cost alternative methods which allow a customer to Opt-Out of a SmartMeter installation. Parties recommending an alternative Opt-Out program shall also provide the estimated costs of any recommended alternative Opt-Out program, and a proposed cost recovery mechanism.

2. Whether the estimated costs of PG&E's Opt-Out program are reasonable.

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[2] *See*, D.10-12-001, Finding of Fact 2.

3. Whether PG&E's proposed cost recovery of the costs for the Opt-Out Program is reasonable.

In addition to these three issues, during the PHC the City of San Francisco noted the importance of adopting an Opt-Out program in order to address the current "delay list" which provides that customers requesting a delay in a SmartMeter installation may do so.[3] Parties should address how the delay list should be coordinated with the Opt-Out program.

Schedule

During the PHC the assigned ALJ noted the difficulty in developing a schedule without an understanding of the issues in this proceeding. The ALJ recommended that a second PHC would follow issuance of this scoping memo.[4] As this scoping memo now identifies the issues to be addressed in this proceeding, the second PHC should determine a schedule.

In any event this proceeding is expected to conclude no later than 18 months after the date of this scoping memo and ruling.

Alternative Dispute Resolution

The Commission's Alternative Dispute Resolution (ADR) program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the second PHC the ALJ will provide parties with an opportunity to participate in ADR. ADR information is available on the Commission's website.[5]

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[3] TR 89-90.

[4] TR 86.

[5] http://www.cpuc.ca.gov/adr/.

Workshops

Parties may recommend one or more workshops to address the issues in this proceeding. The purpose of the workshops shall be to discuss and provide recommendations for discussion of PG&E's requested Opt-Out program and alternative Opt-Out programs developed by parties. The workshops will also consider associated costs and cost recovery. Written reports may be prepared and circulated.

Settlements

Any settlements between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Commission's Rules and shall be served by electronic and paper copy. Such settlement shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with law, and in the public interest. The proposing parties bear the burden of proof as to whether a settlement should be adopted by the Commission.

If a settlement is proposed, the Commission may adopt or reject it. Rule 12.4 addresses the steps the Commission may take in rejecting a settlement. Therefore, in developing and proposing a settlement, the parties should keep in mind the Commission's options regarding the settlement. In any motion proposing a settlement, the settling parties shall indicate whether individual components of the settlement are severable, and what procedural remedy they would prefer the Commission pursue if the Commission does not adopt the settlement.

Service and Service List

The official service list was created at the PHC, and is now available on the Commission's web page. All parties to this proceeding shall serve documents

and pleadings using electronic mail whenever possible, transmitted no later than 5 p.m., on the date for service to occur.[6]

Categorization and *Ex Parte* Communication

The commission preliminarily categorized this matter as ratesetting in Resolution 176-3272, dated April 14, 2011. The categorization of this proceeding is confirmed as ratesetting. The Commission preliminarily determined that hearings would be necessary.

Appeals of this ruling on category, if any, must be filed and served within 10 days.[7]

Ex parte communications are permitted subject to the restrictions, and reporting requirements specified in Article 8 of the Rules.

Presiding Officer

ALJ Bruce DeBerry is the Presiding Officer in this proceeding.

IT IS RULED that:

1. The final categorization of this proceeding is ratesetting and hearings are required.
2. *Ex parte* communications are permitted subject to the restrictions and reporting requirements set forth in Article 8 of the Commission's Rules of Practice and Procedure.
3. The issues and schedule are as set forth above unless amended by the assigned Commissioner or assigned Administrative Law Judge.

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[6] *See*, Rule 1.10.

[7] *See,* Rule 7.6.

4. Parties shall follow the procedure stated above in making any request for final oral argument.

5. Any settlement reached between parties shall be served by paper copy and e-mail as discussed above.

6. Administrative Law Judge Bruce DeBerry is the Presiding Officer in this proceeding.

Dated May 25, 2011, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner