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

Application of Pacific Gas and Electric Company (U 39 M)
for Approval of Modifications to its Smart Meter Program
and Increased Revenue Requirements to Recover the Costs
of the Modifications.

Application 11-03-014
(Filed March 24, 2011)

And Related Matters.

Application 11-03-015
Application 11-07-020

**ECOLOGICAL OPTIONS NETWORK
REPLY BRIEF**

July 30, 2012

Mary Beth Brangan and James Heddle, Co-Directors
Ecological Options Network
PO Box 1047
415-868-1900
info@eon3.net

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California Public Utilities Code § 451

California Constitution, Article XI, Section 7

**ECOLOGICAL OPTIONS NETWORK
REPLY BRIEF**

Ecological Options Network (EON) appreciates this opportunity to file this reply to opening briefs filed by active parties on July 16 and 19, 2012. This filing is pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, and the June 27, 2012 e-mail ruling of Administrative Law Judge Amy Yip-Kikugawa

Introduction

Mary Beth Brangan and James Heddle are Co-Directors of EON, the Ecological Options Network, a non-profit organization devoted to public education and consulting on energy and radiofrequency radiation ("RF") safety issues. EON works with consultants who are top technical and scientific experts in these fields.

TOPICS ADDRESSED

"Health, safety, comfort and convenience" Mandate:

According to the California Public Utilities Code § 451 utilities are required to furnish and maintain such "service, instrumentalities, equipment, and facilities . . . as are necessary to promote the safety, health, comfort, and convenience of [their] patrons, employees, and the public." The CPUC is required to enforce these codes.

The record shows that utilities have imposed AMI technology on customers and the general public against their will without adequately addressing public health, safety, economic and security issues.

Utilities may seek to evade responsibility by arguing that they opposed AMI technology and that the CPUC ordered them to use it anyway — but this does not let the utilities off the hook for failing to fulfill the mandate of Section 451. If they truly felt that the order was mistaken, they had ample means to contest it. Indeed, some have argued that the Commission is a "captive" regulatory agency, so the utilities have little credibility arguing that they are powerless here.

Utilities have presented no evidence that they opposed the CPUC's order on the basis of the health, safety, economic or security problems that Smart Meters pose for their customers or the public at large. Instead, when customers sought to bring these issues to their attention, utilities ignored and belittled these concerns and resisted efforts to get them to conduct a thorough investigation.

By not taking unresolved (and as yet unconsidered) public health, safety, financial and security issues into account, utilities are violating Cal. PUC Code § 451.

Community-Wide Opt-Out:

As documented in previous EON filings in this proceeding, 'smart meters' propagate both RF and Electro-magnetic frequencies (EMF): (1) from the AMI's wireless RF antennas, both inside the home and throughout the neighborhood's mesh network as well as the data collector points and relays on utility poles in neighborhoods and (2) from the switching mode power supply (SMPS) contained in each meter which generates high frequency transient 'spikes,' or 'dirty electricity' which also travels on the wiring through connected wiring systems throughout the house and neighborhood.

Individual customer opt-outs in areas where 'mesh networks' are established between neighboring wireless meters and area data collection points still leave the opt-out customer exposed to these sources of pollution.

ADA Questions:

It is maintained in the utilities' briefs that the ADA (Americans With Disabilities Act) applies only to 'public spaces.' But by utility deployment of 'mesh networks' of wireless AMI devices throughout neighborhoods, utilities have transformed formerly private spaces into de facto commercial public spaces by inundating both homes and neighborhoods with pulsing RF radiation classified as a 2b carcinogen by the World Health Organization, for the utilities' commercial benefit. This 'commercial trespass' transforms formerly private spaces into de facto public spaces, since there is no escape from their fields of pollution. Utilities cannot at the same time violate private space by

their commercial use and claim that it is still private and therefore not subject to ADA for those with medical conditions.

In fact, the CREATION of medical conditions has been widely demonstrated in the case of AMI technology deployment from the thousands of complaints from people throughout the state (and beyond) testifying to severe adverse health effects.

Additionally, the current lack of opportunity to opt out of AMIs for commercial spaces occupied by businesses such as Healing Centers, Health Clinics, Children' Centers, etc., also abrogates rights under the ADA, since they will logically be used by those wishing to avoid excessive exposure to the pulsing class 2b carcinogen radiofrequency radiation. Those customers with medical conditions and those wanting to avoid getting injured, would therefore be unable to be in those places.

For these reasons, CPUC should allow community-wide opt-outs in jurisdictions that so choose and to extend the opt out opportunity to those small businesses logically used by those covered by the ADA.

On the Issue of CPUC Power to Delegate Authority:

According to the California Constitution, Article XI, Section 7:

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

There is no ‘general law’ which prohibits the CPUC from delegating its authority.

If, as utilities argue (see for example SCE Brief page 7), CPUC has "exclusive regulatory power" superseding all other bodies in all utility-related matters, then it clearly has the power to make adjustments in relation to others, including cities and counties, which are sovereign jurisdictions.

The Commission's decisions on Community Choice Aggregation (CCA) demonstrate that it has only limited authority over local governments that have decided to set their own course in regard to certain energy matters. Governments have a mandate to protect the health and safety of their citizens. Similarly, other local organizations such as neighborhood associations or apartment complexes, which have democratic governance, derive their authority from the will of the people involved, as do governments. This is a fundamental principle of our country.

On the Definition of 'Community' for Opt-Out:

'Community' should be defined as (a) any local jurisdiction in which elected officials have voted for 'community-wide' opt-out; (b) any neighborhood association in which a majority of members have so voted; (c) any retirement home, low income housing, apartment or condominium complex in which a majority of members have so voted.

SCE's argument in its brief (page 2) that 'community opt-out negates the right of individual customers to choose,' stands the definition of individual choice on its head. As explained above, it is individual opt-outs in mesh networked neighborhoods or multi-dwelling facilities that 'negates the right of individual customers to choose' to protect themselves from the dual sources of pollution emitted by AMI devices.

If an individual within a community that has voted to opt out wishes to monitor their own energy use, he or she can do so with readily available devices and technologies that do not pollute their neighbors with either radiofrequencies or 'dirty electricity' from an AMI's smps.

On the Imposition of Opt-Out Fees:

The assessment of fees for opting out constitutes a penalty imposed as a means of discouraging customers from doing so, and unfairly impacts their right to choose.

In the case of a community-wide opt-out, the cost of manual reading of existing analogue meters is already included in the bill. Customer's rates already include charges for the

installation of AMI's, therefore, a fee to cover the already included costs of meter reading, charges twice for a service received and once for a service rejected. Thus additional charges are illegitimate and unjustified.

The utilities conducted an ill-considered mass rollout of untested wireless meters, and imposed them on customers without their informed consent. This constituted grave errors on the part of utility management, and therefore any costs of opt-outs – both individual and community-wide – must be borne by the stockholders of the mismanaged utilities and not the customers.

Conclusion

Since the CPUC has as its mandate to see to it that utilities "...promote the safety, health, comfort, and convenience of [their] patrons, employees, and the public," the Commission should allow community-wide opt-out for the jurisdictions and entities defined above without the imposition of penalties or fees.

Dated: July 30, 2012

Respectfully Submitted,

/s/ Mary Beth Brangan

Mary Beth Brangan, Co-Director

/s/ James Heddle

James Heddle, Co-Director
Ecological Options Network
PO Box 1047
415-868-1900
info@eon3.net