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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 (U 39 M)	A.11-03-014

NOTICE OF EX PARTE COMMUNICATION

Pursuant to Rule 8.5 of the Commission's Rules of Practice and Procedure, the Town of Fairfax provides this notice of an ex parte communication to Administrative Law Judge Amy C. Yip-Kikugawa.

On February 9, 2012, Fairfax Town Council member Larry Bragman sent emails to ALJ Yip-Kikugawa in regard to the Town of Fairfax's request for stay. Attachment 1 hereto is a copy of those emails and their respective attachments.

Dated: February 13, 2012

Respectfully submitted,

By: /s/ James M. Tobin

James M. Tobin
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1100 Mar West Street, Suite D
Tiburon, CA 94920
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(415) 704-8919 (facsimile)
jim@tobinlaw.us

Attorney for Town of Fairfax

ATTACHMENT 1

From: bragman@msn.com
To: amy.yip-kikugawa@cpuc.ca.gov
Subject: RE: A.11-03-014 (PG&E SmartMeter Opt-Out Proceeding) - Communication from Town of Fairfax
Date: Thu, 9 Feb 2012 15:23:24 -0800

Dear Judge Yip-Kikugawa:

In its opening brief at page 4, the Town of Fairfax did request an order for "...PG&E to comply with all local governmental ordinances and resolutions described herein pending the decision of the Commission in this proceeding". I have attached a copy of that document for your immediate review and consideration.

Thanks again for your time and consideration.

Respectfully yours,

Larry Bragman

Subject: RE: A.11-03-014 (PG&E SmartMeter Opt-Out Proceeding) - Communication from Town of Fairfax
Date: Thu, 9 Feb 2012 15:12:59 -0800
From: amy.yip-kikugawa@cpuc.ca.gov
To: bragman@msn.com
CC: info@eon3.net; martinot4@gmail.com; sharon.yang@sce.com; candace.morey@cpuc.ca.gov; william.sanders@sfgov.org; marcel@turn.org; cjw5@pge.com; whb@a-klaw.com; jim@tobinlaw.us; jweil@aglet.org; davidlwilner@aol.com; michaelboyd@sbcglobal.net; caleagle@sbcglobal.net; lloydg@co.lake.ca.us; sandi@emfsafetynetwork.org; andrew.weisel@macquarie.com; bwt4@pge.com; cjn3@pge.com; klatt@energyattorney.com; kaf4@pge.com; kxhy@pge.com; mrw@mrwassoc.com; case.admin@sce.com; janet.combs@sce.com; rgiles@semprautilities.com; centralfiles@semprautilities.com; vanessav@ci.salinas.ca.us; gcgebin@yahoo.com; michael.hetherington@usa.net; marzia.zafar@cpuc.ca.gov; jcdt@pge.com; m2ld@pge.com; nes@a-klaw.com; cem@newsdata.com; lisa_weinzimer@platts.com; cjgf@pge.com; regrelcpuccases@pge.com; healthhab@igc.org; brbarkovich@earthlink.net; jeff@jbsenergy.com; martinhomec@gmail.com; aloke.gupta@cpuc.ca.gov; cherie.chan@cpuc.ca.gov; christopher.villarreal@cpuc.ca.gov; michael.sukhov@cpuc.ca.gov; thomas.roberts@cpuc.ca.gov; sepideh.khosrowjah@cpuc.ca.gov

The Commission may only act (issue a decision) based on evidence in the record. Per Rule 8.3(k) of the Commission's Rules, ex parte communications, and any notices filed under Rule 8.3, are not part of the record of the proceeding.

Amy C. Yip-Kikugawa
Administrative Law Judge
California Public Utilities Commission
(415)-703-5256

From: Lawrence Bragman [mailto:bragman@msn.com]
Sent: Thursday, February 09, 2012 12:53 PM
To: Yip-Kikugawa, Amy C.
Cc: info@eon3.net; martinot4@gmail.com; sharon.yang@sce.com; Morey, Candace; bill sanders; marcel@turn.org; cjw5@pge.com; whb@a-klaw.com; jim tobin; jweil@aglet.org; davidlwilner@aol.com; michael boyd; caleagle@sbcglobal.net; lloydg@co.lake.ca.us; sandi@emfsafetynetwork.org; andrew.weisel@macquarie.com; bwt4@pge.com; cjn3@pge.com; klatt@energyattorney.com; kaf4@pge.com; kxhy@pge.com; mrw@mrwassoc.com; case.admin@sce.com; janet.combs@sce.com; rgiles@semprautilities.com; centralfiles@semprautilities.com; vanessav@ci.salinas.ca.us;

gcgebin@yahoo.com; michael.hetherington@usa.net; Zafar, Marzia; jcdt@pge.com; m2ld@pge.com; nes@a-klaw.com; cem@newsdata.com; lisa_weinzimer@platts.com; cjgf@pge.com; regrelcpuccases@pge.com; sandy ross; brbarkovich@earthlink.net; jeff@jbsenergy.com; martinhomec@gmail.com; Gupta, Aloke; Chan, Cherie; Villarreal, Christopher; Sukhov, Michael; Roberts, Thomas; Khosrowjah, Sepideh
Subject: RE: A.11-03-014 (PG&E SmartMeter Opt-Out Proceeding) - Communication from Town of Fairfax

Dear Judge Yip-Kikugawa:

Thank you for your response.

In terms of whether the Town of Fairfax formally requested a stay of the order, I have attached my previous Ex Parte Communication with the Commission in which I requested a stay until Phase 2 was completed. The last two paragraphs of my cover letter specifically request such relief. The commission did not respond to this request.

Pursuant to your instructions, I will file a Notice of Ex Parte Communication without delay. In the meantime, thank you for your time and consideration.

Respectfully yours,

Larry Bragman
Fairfax Town Council

Subject: A.11-03-014 (PG&E SmartMeter Opt-Out Proceeding) - Communication from Town of Fairfax
Date: Thu, 9 Feb 2012 11:33:01 -0800
From: amy.yip-kikugawa@cpuc.ca.gov
To: bragman@msn.com
CC: info@eon3.net; Martinot4@gmail.com; Sharon.yang@sce.com; candace.morey@cpuc.ca.gov; william.sanders@sfgov.org; marcel@turn.org; cjw5@pge.com; whb@a-klaw.com; jim@tobinlaw.us; jim@tobinlaw.us; jweil@aglet.org; DavidLWilner@aol.com; michaelboyd@sbcglobal.net; caleagle@sbcglobal.net; lloydg@co.lake.ca.us; sandi@emfsafetynetwork.org; andrew.weisel@macquarie.com; BWT4@pge.com; cjn3@pge.com; klatt@energyattorney.com; KAF4@pge.com; kxhy@pge.com; mrw@mrwassoc.com; case.admin@sce.com; janet.combs@sce.com; RGiles@semprautilities.com; CentralFiles@SempraUtilities.com; vanessav@ci.salinas.ca.us; gcgebin@yahoo.com; michael.hetherington@usa.net; marzia.zafar@cpuc.ca.gov; jcdt@pge.com; m2ld@pge.com; nes@a-klaw.com; cem@newsdata.com; lisa_weinzimer@platts.com; CJGF@pge.com; regrelcpuccases@pge.com; healthhab@igc.org; brbarkovich@earthlink.net; jeff@jbsenergy.com; martinhomec@gmail.com; aloke.gupta@cpuc.ca.gov; amy.yip-kikugawa@cpuc.ca.gov; cherie.chan@cpuc.ca.gov; christopher.villarreal@cpuc.ca.gov; michael.sukhov@cpuc.ca.gov; thomas.roberts@cpuc.ca.gov; sepideh.khosrowjah@cpuc.ca.gov

Mr. Bragman,

This is in response to your email communication to Commissioner Florio's advisor, Sepideh Khosrowjah yesterday. An individual Commissioner cannot issue a stay of a Commission decision. Further, while your email references a request to issue a temporary stay of the decision for the Town of Fairfax, I have not received a formal request and, therefore, cannot make any determination whether such a request should be granted. As you have stated below, the issue of whether to allow communities to exercise the opt-out option will be considered in Phase 2 of A.11-03-014. However, at this time, residential customers may exercise the opt-out option and not have a wireless SmartMeter.

Finally, please be advised that your email to Ms. Khosrowjah is a reportable ex parte communication, as your question is not merely procedural in nature but a request to modify a Commission decision. Therefore, it is subject to Rules 8.3(c)(3) and 8.4 of the Commission's Rules of Practice and Procedure. Please file a notice of ex parte communication by Monday, February 13, 2012. To the extent you have sent similar emails to any of the other Commissioners or their advisors, those communications shall also be reported.

Thank you,

Amy C. Yip-Kikugawa
Administrative Law Judge
California Public Utilities Commission
(415)-703-5256

From: Khosrowjah, Sepideh
Sent: Thursday, February 09, 2012 9:52 AM
To: Yip-Kikugawa, Amy C.
Subject: FW: Smart Meter Opt Out Orders and the Town of Fairfax

Dear ALJ Yip-Kikugawa,
I received this inquiry from Mr. Bragman at the Town of Fairfax. Would you please respond to him and address his concerns? I really appreciate your help.
Thanks
Sepideh Khosrowjah

Sepideh Khosrowjah
Chief of Staff to Commissioner Mike Florio
California Public Utilities Commission, 505 Van Ness Ave., San Francisco, CA 94102
(O) 415-703-1190
(C) 415-271-2760
(F) 415-703-2532

From: Lawrence Bragman [mailto:bragman@msn.com]
Sent: Wednesday, February 08, 2012 12:14 PM
To: Khosrowjah, Sepideh; Khosrowjah, Sepideh
Subject: Smart Meter Opt Out Orders and the Town of Fairfax

Hi Sepidah:

The Fairfax Town Council is holding a special meeting this coming Monday evening at 7 p.m. to discuss the CPUC's Smart Meter Opt Out decision. The problem it presents to us is that the Commission will not be considering community opt out until Phase 2 which could be several months away. I requested that the Commission issue a Temporary Stay in Opt Out jurisdictions but there has been no response to date.

Can you please see whether Commissioner Florio can issue a stay order for Opt Out jurisdictions like Fairfax that would like to remain status quo until that issue is considered by the CPUC? The current plan by PGE to allow opt outs for those who pay the fee cause a lot of confusion in Fairfax and it only seems fair that installation should be stayed in opt out jurisdictions until the Commission considers the issue in Phase 2.

Thank you very much for your time and consideration.

Larry Bragman
Fairfax Town Council

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 (U 39 M)	A.11-03-014

PROTEST OF THE TOWN OF FAIRFAX, CALIFORNIA, THE ALLIANCE FOR HUMAN AND ENVIRONMENTAL HEALTH AND COUNTY OF MARIN, CALIFORNIA

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Attorneys for Protestants

April 25, 2011

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 (U 39 M)	A.11-03-014

PROTEST OF THE TOWN OF FAIRFAX, CALIFORNIA, THE ALLIANCE FOR HUMAN AND ENVIRONMENTAL HEALTH, AND COUNTY OF MARIN, CALIFORNIA

Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Town of Fairfax, California, the Alliance For Human and Environmental Health, a west Marin coalition, and the County of Marin, California (collectively the "Protestants)[1] hereby protest Application A.11-03-014, filed by Pacific Gas and Electric Company ("PG&E") on March 24, 2011 (the "Application" or "PG&E Application"). For the reasons set forth below, the Protestants urge the Commission to deny the PG&E Application and instead, after investigation and hearing,

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[1] Attached hereto as Attachment A is a letter from Susan Adams, President of the Marin County Board of Supervisors, to President Peevey expressing support for this Protest on behalf of the Marin County Board of Supervisors. Since this letter was prepared, Lake and Mendocino Counties have decided to file Protests separately reflecting their specific concerns. Supervisor Steve Kinsey sought formal approval of the Marin County Board of Supervisors to become a participating party in this Protest, and the Board of Supervisors granted such approval during its April 26, 2011, public meeting.

require PG&E to implement an opt-out program that is both structurally and financially in the best interests of PG&E's consumer customers as described more fully herein.

I. INTRODUCTION

The PG&E Application is in response to President Peevey's direction given during the Commission's March 3, 2011, meeting that PG&E prepare a proposal for the Commission's consideration that will allow some form of opt-out for customers who object to SmartMeter devices at reasonable cost, to be paid by the customers who choose to opt-out.[2] The opt-out proposal set forth in the PG&E Application is unreasonable, unjust, and does not meet the requirements set forth in President Peevey's directives.

PG&E's proposal limits the exercise of an opt-out right to individual residential subscribers, and denies this right to duly constituted local government entities that have lawfully acted on behalf of their residents to express a community-wide desire to opt-out of SmartMeter installations. As included in Attachment A hereto, numerous local governments in PG&E's service territory have enacted Ordinances or Resolutions requiring a moratorium on further SmartMeter installations in their jurisdictions pending analysis of issues of serious concern ("Moratorium Enactments"). These enactments

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[2] See, CPUC President Michael R. Peevey's Statement on Smart Meters, March 10, 2011,http://www.cpuc.ca.gov/PUC/aboutus/Commissioners/01Peevey/speeches/110310_meters.htm. The PG&E Application appeared on the Daily Calendar on March 25, 2011. Commission Rule 2.6(a) states that "a protest or response to an application must be filed within 30 days of the date the notice of the filing of the application first appears in the Daily Calendar" and Rule 1.15 provides this deadline falls on a day the Commission offices are closed, it is extended to the first day thereafter. This Protest and Response is therefore in compliance with Rule 2.6(a).

have largely been ignored by PG&E, as they are in the instant Application. The Application also ignores the policy and technological bases making such a broader opt-out scope both reasonable and consistent with the concerns cited by President Peevey.

In addition, the rate levels and rate structure proposed for exercise of an opt-out are based on fundamentally flawed costing assumptions and analysis set forth in the Testimony of PG&E attached to the Application. A memorandum from Dr. Lee Selwyn identifying some of the material errors and omissions of the PG&E cost testimony evident from only a preliminary review, as Attachment C, including its total failure to address the avoided costs of compliance with Moratorium Enactments.

In light of these fundamental deficiencies and omissions of the PG&E Application, set forth in further detail below, and the beneficial potential of President Peevey's directive if implemented with a proper scope and based on reasonable costing analysis, Protestants also request that the Commission promptly order PG&E to comply with all local governmental ordinances and resolutions described herein pending the decision of the Commission in this proceeding, if PG&E will not voluntarily agree to do so.

II. BACKGROUND

The Application summarizes some of the relevant Commission regulatory background leading to the Application.[3]

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[3] PG&E Application at 3-4.

However, PG&E fails to mention that D.09-03-026, which PG&E relies upon to support the current technology of its SmartMeters and the "mesh network" formed by the radio transmissions from these meters used to deliver SmartMeter data to the PG&E Data Collection Units ("Data Collection Units"), did not find that these radio transmissions comply with any FCC or other health and safety standards; did not include any provisions demonstrating that the Commission had evaluated the adequacy of any such standards with respect to potential health impacts on exposed individuals or other public interest concerns; was not based on any CEQA analysis, and did not preempt any existing jurisdiction of municipalities, counties, or other local government bodies to approve the construction and operation of facilities that have such impacts.

President Peevey's March 3, 2011, Statement indicated that no objections to smart meter implementation had occurred anywhere except in Northern California. However, on March 24, 2011, Utility Consumers' Action Network {"UCAN") filed A.11-03-015, requesting that the Commission compel SDG&E to also establish an opt-out program.[4] That Application states that numerous SDG&E customers have expressed opposition to its smart meter program on various grounds including accuracy, intrusiveness, privacy concerns, and health impacts.[5] These concerns mirror those expressed by parties questioning the PG&E SmartMeter program.

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[4] A.11-03-015, *Application of Utility Consumers' Action Network For Modification of Decision 07-04-043 So As To Not Force Residential Customers to Use Smart Meters*, filed March 24, 2011.
[5] Id. at 2-3.

Beyond the Commission's proceedings, the Application also fails to include any mention of the substantial opposition to PG&E's chosen SmartMeter technology voiced by numerous governmental bodies whose citizens would be affected. Attached hereto as Attachment B are copies of formal Resolutions and Ordinances of the following governmental bodies within the PG&E service territory that have opposed installation of the SmartMeter network in their jurisdictions:[6]

Mendocino County
Lake County
Marin County
Santa Cruz County
City of Capitola
City of Monterey
City of Seaside
Town of Fairfax
Town of Ross
City of Morro Bay
City of Richmond

In addition, AB 37 remains under active consideration by the State Legislature, and would mandate a smart meter opt-out plan for all California electric utilities regulated by the Commission, including removal of the meter, and would also mandate suspension of deployment of these meters until the Commission adopts the required opt-out plan.[7] This legislation, if adopted, would apply statewide.

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[6] These are collectively referred to herein as "Moratorium Enactments."
[7] A.B. 37, 2010-2011 Reg. Sess. (Ca. 2010).

In short, President Peevey's directive presents the Commission with an opportunity to address the numerous concerns expressed by many individuals, interest groups, and governmental bodies concerning PG&E's SmartMeter program. This Response and Protest urges the Commission to act cooperatively with concerned local governments by requiring that PG&E's opt-out plan include them as eligible to exercise an opt-out from the SmartMeter program if they determine it serves the public interest of their jurisdiction, while doing so in a manner consistent with the Commission's policy objectives with respect to smart grid implementation and responsibility for the actual costs involved, and particularly with respect to areas where the SmartMeter facilities and network have not been installed.

III. ISSUES RAISED BY THE PG&E APPLICATION

Discovery has not yet commenced in this proceeding. The PG&E Application and its attached testimony raise material factual, legal, and policy issues which must be investigated by the Commission. While Protestants list those issues that they have identified to date, additional specific issues will surely be identified as this proceeding progresses, and Protestants respectfully request the right to identify additional issues as appropriate.

At a minimum, the Commission should set for hearing and fully investigate the following issues, which are discussed in further detail below:

1. Should the scope of the opt-out program be restricted to only individual residential subscribers of PG&E, or should it also allow opt-out to be exercised by local government bodies on behalf of the residents of their jurisdictions?

2. What are the accurate costs of the opt-out program and its various

components? Do these costs differ between individual and community opt-outs, and between opt-outs in areas where the SmartMeter network has already been installed and where it has not yet been installed? What is the just and reasonable rate structure to apply to these various scenarios of exercise of the opt-out right?

3. What procedures should be established to read the meters of PG&E customers that have collectively or individually exercised their opt-out right?

4. Is PG&E's "turn off the radio" proposal for implementing a SmartMeter opt-out unreasonable in light of the technology included in the SmartMeters and the mesh network PG&E has chosen to construct?

5. Should the opt-out right include an option to use analog meters?

6. Should PG&E be required to maintain an inventory of analog meters sufficient to provision projected demand for such meters under the opt-out program, or take other steps to minimize the cost of this option?

Proper resolution of each of these issues is essential if the opt-out plan adopted by the Commission is to address the legitimate concerns that have been raised with respect to PG&E's SmartMeter technology and associated mesh radio network communications architecture, as well as to include requisite recognition of the role of local governmental bodies with respect to the health, welfare, and environment of the citizens of their jurisdictions.

IV. THE PG&E OPT-OUT PLAN SHOULD INCLUDE THE RIGHT OF LOCAL GOVERNMENTS TO EXERCISE AN OPT-OUT ON BEHALF OF THE RESIDENTS OF THEIR JURISDICTIONS

A. Local Governments Possess Authority to Regulate Material Aspects of PG&E's SmartMeter Deployment

As detailed above, numerous counties, cities, and towns within PG&E's service territory have enacted Ordinances or Resolutions imposing moratoriums on further the installation of PG&E's SmartMeters and the associated mesh radio network within their

jurisdictions. They have taken these actions pursuant to their authority under California law. For example, as stated in the Ordinance the Town of Fairfax:[8]

> A. The Town of Fairfax (the "Town"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection.
>
> B. In addition, the Town retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions…, whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."
>
> C. Further, Public Utilities Code section 2902 reserves the Town's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."

While the Commission has broad authority over most activities conducted by PG&E, there are clearly aspects of the SmartMeter deployment project that remain subject to authorization or regulation by local authorities. Failure of the Commission to adopt an opt-out plan that recognizes the continuing jurisdiction of local governments would constitute more than mere interference with their obligation to protect the health and safety of their residents. Such an opt-out plan, as well as the current status of SmartMeter deployment in jurisdictions that have adopted Moratorium Enactments,[9] violates the separation of powers mandated by the California Constitution.

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[8] See, Attachment B at p.29 *et seq.*

[9] The Commission's decisions concerning PG&E's SmartMeter deployment plans have completely ignored local ordinances passed by Constitutional bodies. For example,

For example, in 1954, the Town of Fairfax entered into a Franchise Agreement with PG&E which provides it with access to its public rights of ways to construct poles, wires, conduits, meters and related items used in distributing electricity. The franchise was granted under the Franchise Act of 1937, which is encoded in Public Utilities Code section 6201 *et seq.* Section 6203 states that:

> "The legislative body may in such a franchise impose such other and additional terms and conditions not in conflict with this chapter, whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."

Section 6203, as well as the other statutory and Constitutional provisions cited above, provided authority for the Town of Fairfax to enact its Ordinance attached hereto.

As cited above in the Town of Fairfax Ordinance, towns and cities have a duty and authority under the California Constitution to protect the health and safety of their residents. The Fairfax Town Council held numerous public meetings in which there was a substantial amount of testimony by residents who suffer from electro-magnetic sensitivity, cancer and other conditions which make them susceptible to injury from the deployment of the SmartMeter system.

(footnote continued) Fairfax has had a wireless telecommunications ordinance in effect since 1999. (Fairfax Ordinance 19.04, 19.08) which requires that a Use Permit be obtained before a wireless telecommunications device is installed anywhere in the Town. In this case, PG&E installed a series of high powered DCUs within public rights of way without notifying the Town of Fairfax or applying for Use Permit to do so. In circumventing longstanding local ordinances, PG&E has effectively denied local residents notice or opportunity to be heard.

Under the Americans with Disabilities Act, public entities cannot legally impose barriers or conditions which deleteriously impact residents who suffer from these disabilities and illnesses.[10] The Town of Fairfax, as well as other local governments that have adopted Moratorium Enactments, have found that the deployment of the SmartMeter project ignores the rights of their residence absent evaluation of these impacts. Furthermore, the unregulated deployment of SmartMeters may effectively devalue their property by making it unfit for them to live in, giving rise to potential inverse condemnation claims against these entities. As further described elsewhere in this Protest, the PG&E opt-out proposal would effectively punish them for asserting their right to protect their health and safety. These legal and human problems led the Town Council to adopt its Ordinance.

Similarly, the Moratorium Enactment of the Marin County Board of Supervisors relies on its Constitutional authority and Sections 6203 and 2902 of the Public Utilities

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[10] *See*, 56352 Federal Register, Vol. 67, No. 170, Tuesday, September 3, 2002, where the Architectural and Transportation Barriers Compliance Board, an independent Federal agency established by section 502 of the Rehabilitation Act whose primary mission is to promote accessibility for individuals with disabilities, found with respect to electro-magnetic and chemical sensitivities:

> "The Board recognizes that multiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual's major life activities."

An opt-out program will only be effective if it protects these individuals. Moreover, the opt-out plan certainly cannot force them to pay more to protect their health without running afoul of Public Utilities Code Section 453 (b) which states in pertinent part that: "No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code."

Code, as well as its franchise agreement with PG&E. In so acting, the Marin County Board of Supervisors listed several specific concerns about the SmartMeter program, including accuracy of the meters, lack of protection of confidential information transmitted over the mesh network,[11] potential adverse impact on the amateur radio communications network and emergency communications systems, significant health and safety questions, and unproven conservation results, and as a result found that:

> [T]here is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the County without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the County's Code requirements, and subjecting residents of Marin County to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.

As these and the other Moratorium Enactments in Attachment B expressly demonstrate, numerous local governments within PG&E's service territory have attempted to halt PG&E's deployment of its selected technology for obtaining usage data of customers. These enactments have met with resistance and non-compliance.

The establishment of an opt-out plan for PG&E in this proceeding presents the opportunity for the Commission to recognize the lawfulness of these local government

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[11] Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities, and as such pose an unreasonable intrusion of utility customers' privacy rights and ultimately the safety and security of the power transmission system itself. Indeed, the fact that the Commission has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27.

decisions, and to integrate these public determinations into a plan which also meets the broad policy objectives of the Commission. By allowing local governments the right to exercise opt-out rights as part of this plan, the Commission can still structure the cost and rate implications of such actions in a manner that meets President Peevey's requirement that the costs caused are borne by those opting out. The Commission can also include in the opt-out plan alternative data gathering requirements, such as the procedures and timing of meter reading that will provide information necessary for operation of a broader smart grid.[12]

B. The Mesh Network Configuration Adopted By PG&E Supports The Reasonableness Of A Community Opt-out Right

In addition to the authority and responsibility of local governments, the mesh network wireless radio technology adopted by PG&E further supports the reasonableness of an opt-out right being available on a basis broader than an individual residential subscriber.

In essence, under PG&E's configuration each SmartMeter transmits not only to a PG&E DCU, but transmits to all other meters in its area. These SmartMeters, in turn, re-transmit this information again to all surrounding meters, and on and on, until the cumulative data enters the PG&E network at a DCU. While PG&E points to potential weakening of this mesh by a single opt-out, and creates costs to address this assertion, the converse fact is that if a single concerned resident requests an opt-out for any of

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[12] Protestants do not concede that individual home meter information is necessary to reach this objective. The smart grid will have many measuring devices at various points of the distribution network where real time demand can be measured, without the use of the mesh network or SmartMeters. The extent of this capability is not fully available to Protestants at this time.

several legitimate reasons,[13] that resident will continue to receive transmissions of unmeasured strength from all surrounding meters. But if citizens of a local jurisdiction are collectively concerned enough to cause their local government to opt-out in a broader geographic area, such as a town, these external health and safety concerns are also addressed. If the SmartMeters were all connected to PG&E by a technology (such as an internet connection) which did not affect neighboring properties, this issue would not be as relevant as it is, given the mesh wireless network configuration PG&E has selected.

V. THE OPT-OUT PLAN MUST INCLUDE AN OPTION TO RETAIN AND USE ANALOG METERS, NOT JUST THE "RADIO OFF" PROPOSAL OF PG&E, AND A REQUIREMENT THAT PG&E MINIMIZE THE COST OF SUCH ANALOG METERS THROUGH INVENTORY OR OTHER MEANS

The PG&E Application proposes that it will implement an opt-out by "turning off the radio." This would leave the SmartMeter in place, with two deactivated transmitters, but otherwise functioning as if no opt-out occurred. This approach would presumably permit PG&E to continue to install SmartMeters and the mesh network in locations where they are not yet installed, including areas subject to Moratorium Enactments.

This proposal could be an option for residential subscribers or local governments that chose it, but it is both economically unsound and technologically flawed.

If a local jurisdiction opts out of the SmartMeter program for areas where none of the infrastructure is present, it would be wasteful and unreasonable for PG&E to install

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[13] These reasons include not only health issues, but also concerns about privacy of transmitted data, the possibility of use by individuals with equipment capable of reading the signals to identify residences with no or very low energy use as targets for theft, to name a few. Such concerns obviously vary between local jurisdictions.

the meters and mesh network anyway. The Commission's design of this opt-out plan should therefore include an "analog opt-out" under these circumstances.

Further, on the individual residential subscriber basis even in areas where the SmartMeters and mesh networks have been installed, such an "analog opt-out" should also be available due to the technology present in the SmartMeters beyond merely the radio transmitters. Current SmartMeters contain a power supply which operates whether or not the radios are deactivated, and that continually creates significant amounts of "dirty electricity" of health concern to many people. This is not true of analog meters. The opt-out program should include this option, and ensure that availability of a sufficient supply of analog meters through reasonable inventory or other means designed to minimize the cost and assure availability of analog meters.[14]

VI. PG&E'S COST STUDY EGREGIOUSLY OVERSTATES THE REASONABLE COSTS OF AN OPT-OUT BASED ON FAULTY ASSUMPTIONS AND METHODOLOGY, AND RESULTS IN PROPOSED RATES THAT ARE UNREASONABLY HIGH, UNJUST, AND DISCRIMINATORY

PG&E's cost testimony presents numerous material issues of fact that require full exploration in the hearing process.

At the outset it must be emphasized that the PG&E cost analysis is entirely focused on "turning off" the radio of already installed and functioning SmartMeters. It nowhere addresses the costs (if any) of complying with the Moratorium Enactments by not installing SmartMeters and the mesh network facilities in locations where they do not currently exist, or of allowing community opt-outs in such locations. Any such cost

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[14] *See*, UCAN's A.11-03-015, which describes how SDG&E has used lack of inventory of analog meters as a limiting factor on opt-opt out capabilities.

data would obviously need to include the costs saved by retaining existing metering facilities. Nor would these cost savings necessarily be offset by additional costs of meter reading as asserted in the PG&E testimony. As discussed below, the potential for applying the same cost-effective meter reading processes that would apply to an individual or communal opt-out in an area where SmartMeters already exist could also be used in areas where they do not. For example, broad use of PG&E's existing or a similar level payment plan, use of post cards or Internet reporting subject to audit and true-up, and the like.

With respect to the cost testimony PG&E did present, it is premised on faulty assumptions that have the effect, intentional or not, of resulting in rates that are prohibitively expensive for residential customers and effectively sabotage the practical reality of the proposal. For example, the PG&E study assumes that part of the cost of an opt-out must be the increased per meter cost to manually read opt-out meters on a monthly basis using physical presence at the meter location. PG&E asserts without foundational support that this is the most economical alternative to collection of such data, without specific analysis of any seemingly reasonable alternatives, such as a Commission-imposed requirement that opt-out meters participate in a level payment plan, for example, or that post card or Internet input by customers subject to true-up, is implemented.[15] Such reporting could be designed in the format best designed to efficiently be input into PG&E's data collection systems. Protestants do not at this time

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[15] Connection of a meter to an existing broadband service of a residence would seem a straightforward and economical alternative.

make a specific alternative proposal in this regard; any such proposal will require additional information from PG&E not included in the Application.

This issue is again different in areas where SmartMeters and the mesh network have not yet been installed. Moreover, and as Dr. Selwyn has observed, whatever additional up-front and recurring costs might be engendered by a customer's or a community's decision to opt-out prior to the installation of the SmartMeter(s) must then be offset by the costs that PG&E avoids by not installing the SmartMeters in those situations. Because PG&E's cost study failed even to address such pre-installation opt-outs, it afforded no consideration whatsoever to these avoided costs. For example, existing billing systems could remain in place, and community opt-outs could involve alternative avenues of addressing the costs involved.

VII. THE COMMISSION SHOULD PROMPTLY ORDER PG&E TO COMPLY WITH THE LOCAL GOVERNMENT MORATORIUM ENACTMENTS DESCRIBED HEREIN PENDING THE COMMISSION'S DECISION IN THIS PROCEEDING

Protestants that are local government entities have adopted Moratorium Enactments that are within their legal authority and do not conflict with any exercise by the Commission of its broad authority to regulate PG&E. This proceeding will be far less meaningful if PG&E is permitted to continue to flaunt the Moratorium Enactments during its pendency. Further costs will be incurred by PG&E, perhaps wastefully, if the scope of the opt-out program is ultimately determined to include the local government opt-out rights sought by Protestants, as it should.

It would in fact be surprising if PG&E would not voluntarily agree to abide by these enactments in the absence of an authoritative determination that they are

somehow entitled to ignore them. Protestants are unaware of any such Commission determination. However, this is exactly what is occurring.

In light of these circumstances, and also in light of the expeditious schedule proposed by PG&E, such an interim preservation of the status quo would not significantly affect PG&E's overall SmartMeter program. It would not affect it all outside of jurisdictions that have adopted Moratorium Enactments. But such an interim requirement would materially support the concerns of the local government bodies involved, and allow the consideration of their opt-out proposals in this proceeding without the degradation of the potential of their ability to serve their citizens as they best determine is in their public interest.

For these reasons the schedule proposed by Protestants below includes proposed early dates for motions requesting such an order and a prompt ruling on those motions. Protestants would of course prefer that PG&E made such expenditure of limited public resources unnecessary by voluntarily agreeing to comply with the Moratorium Enactments pending the Commission's final decision, and urge the Commission to support such a voluntary agreement by PG&E.

VIII. CATEGORIZATION, NEED FOR HEARING AND SCHEDULE

Protestants agree with PG&E that the Commission's schedule for this proceeding should be as expeditious as possible, while still providing for full investigation of the issues presented and meaningful participation by all interested parties. Because of the numerous issues Protestants have identified at even this early stage, Protestants assert

that evidentiary hearings are required, and therefore oppose PG&E's first alternative schedule that does not provide for hearings.

As set forth in Section VII above, Protestants urge the Commission to promptly adopt an interim order in this proceeding requiring PG&E to comply with the local government ordinances and resolutions described herein pending the final Commission decision. The schedule proposed below modifies PG&E's second alternative schedule (with hearings) by proposing dates subsequent to the PHC when motions for such an order can be filed, responded to, and ruled upon on an expedited basis. This results in later subsequent procedural dates than those proposed by PG&E because Protestants have limited resources which cannot be simultaneously applied to the motion for interim order and testimony preparation.

Protestants' Proposed Schedule

Application Filed	March 24, 2011
Prehearing Conference	May 13, 2011
Motions for Interim Order	May 27, 2011
Responses to Motions for Interim Order	June 6, 2011
Responsive Testimony	June 20, 2011
Ruling on Motions for Interim Order	June 27, 2011
Concurrent Rebuttal Testimony	July 3, 2011
Evidentiary Hearings	July 11 – July 14, 2011 (4 days)
Opening Briefs	August 4, 2011
Reply Briefs (case Submitted)	August 18, 2011

Rather than specified dates for the Proposed and Final Decisions, Protestants urge the Commission to act in as prompt a manner as is consistent with thorough and complete investigation of the issues raised and record presented. If the Commission has entered the interim order sought by Protestants, the danger of relatively minor delays in the final decision causing a material amount of continuing installation of mesh networks and SmartMeters in violation of the local government ordinances and resolutions described above would be materially reduced.

Protestants agree with PG&E that the instant proceeding be categorized as "ratesetting."

IX. CONCLUSION

For the reasons set forth above, the Commission should investigate the issues raised in this Protest and those of other parties, promptly issue the interim order described herein, and upon consideration of the record mandate that PG&E implement a SmartMeter opt-out plan including the components and rate structures described herein.

Dated: April 25, 2011, at Tiburon, California.

Respectfully submitted,

By: /s/ James M. Tobin

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Attorneys for Protestants

ATTACHMENT A

COUNTY OF MARIN

THE BOARD OF SUPERVISORS OF MARIN

ADMINISTRATION BUILDING
3501 CIVIC CENTER DR. SUITE 329
SAN RAFAEL, CALIFORNIA 94903-4193
TELEPHONE (415) 499-7331
FAX (415) 499-3645
TTY (415) 499-6172
w.co.marin.ca.us/bos

April 22, 2011

Michael R. Peevey, President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94012

Re: Marin County support for Petition of Protest and Response to PG&E SmartMeter opt-out program

Dear Mr. Peevey:

To follow our letters of April 18 and March 22, 2011, the Marin County Board of Supervisors again would like to thank the Public Utilities Commission for its recent decision directing the Pacific Gas & Electric Company (PG&E) to develop an opt-out program for its SmartMeter technology. As previously discussed, Marin County does not support PG&E's recently released SmartMeter opt-out proposal. In particular, we find objectionable their request to charge customers substantial, recurring fees to have SmartMeters removed from their homes.

On behalf of the Marin County Board of Supervisors, I write to formally notify you of our support for the Petition of Protest and Response that is being submitted by the Town of Fairfax, CA; Lake County, CA; Mendocino County, CA; and the Alliance for Human and Environmental Health. As noted in their petition, the proposal set forth in PG&E's current application is unreasonable, unjust, and does not meet the requirements set forth in your Commission's previous directives. The rate levels and rate structure proposed for exercise of an opt-out provision are based on fundamentally flawed costing assumptions and analysis set forth in the testimony of PG&E attached to their application. In addition, PG&E's proposal limits the proposed opt-out right to individual residential subscribers, and denies this right to local governments such as our own that have lawfully acted on behalf of our constituents to express a community-wide desire to opt-out of SmartMeter installations.

Marin County respectfully urges your Commission to require that PG&E's opt-out plan enable local governments to exercise a community-wide opt-out from the SmartMeter program if we determine it serves the public interest of our jurisdiction. Further, we respectfully request that the proposed cost structure imposed upon individuals or communities choosing to exercise such an opt-out option be re-evaluated to ensure it is based upon actual costs across the entire customer base.

We appreciate your consideration of our request, and wish to thank your Commission for its efforts to address this important issue.

Respectfully submitted,

Susan L. Adams, President
Marin County Board of Supervisors

cc: The Honorable Assembly Member Jared Huffman
The Honorable Senator Mark Leno

PRESIDENT
SUSAN L. ADAMS - SAN RAFAEL 1ST DISTRICT
HAROLD C. BROWN - SAN ANSELMO 2ND DISTRICT
VACANT - 3RD DISTRICT
VICE PRESIDENT
STEVE KINSEY - SAN GERONIMO 4TH DISTRICT
JUDY ARNOLD - NOVATO 5TH DISTRICT
CLERK
MATTHEW H. HYMEL

ATTACHMENT B

ORDINANCE NO. 4272

URGENCY ORDINANCE IMPOSING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE UNINCORPORATED AREA OF MENDOCINO COUNTY

The Board of Supervisors of the County of Mendocino ordains as follows:

Chapter 8.300 of Title 8 is added to the Mendocino County Code to read as follows:

CHAPTER 8.300

SMARTMETER MORATORIUM

Section 8.300.010 Purpose and Intent

It is the purpose and intent of this Chapter to adopt a moratorium on the installation of SmartMeters and related equipment to allow time to analyze additional information regarding the potential risks and effects of SmartMeters to the health, safety and welfare of County residents.

Section 8.300.020 Findings

1. The County of Mendocino (hereinafter the "County"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection.

2. The County of Mendocino has a franchise agreement with PG&E that has been in effect since 1945.

3. The County retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions..., whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."

4. Public Utilities Code section 2902 reserves the County's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."

5. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is preparing to install these meters within the County of Mendocino.

6. Concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that State. The City and County of San Francisco has challenged the installation and other municipalities and the cost of moratoriums, and Santa Cruz have issued moratoriums seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated.

7. Major problems and deficiencies with SmartMeters in California have been brought to the attention of the Board of Supervisors of the County of Mendocino, including PG&E's confirmation that SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.

8. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27.

9. There is now evidence showing that problems with SmartMeters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies, and the public.

10. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional human-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.

11. FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and

12. The primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this

assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use timeshifting. Further, some engineers and energy conservation experts believe that the SmartMeters program--in totality--could well actually increase total electricity consumption and therefore the carbon footprint.

14. Assembly Member Jared Huffman also recently introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeter installed and allow customers to opt-out of wireless SmartMeter installation, including removing existing SmartMeters where requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements.

15. Because the potential risks to the health, safety and welfare of County residents are so great, the Board of Supervisors wishes to adopt a moratorium on the installation of SmartMeters and related equipment within the unincorporated area of the County of Mendocino. The moratorium period will allow legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.

16. There is a current and immediate threat to public health, safety and welfare because, without this ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the County without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the County's Code requirements, and subjecting residents of Mendocino County to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.

17. The Board of Supervisors hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

18. There is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this urgency moratorium ordinance; and

19. Based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the SmartMeter technology; therefore it is appropriate to adopt a moratorium that would remain in effect from the date of its adoption until it sunsets in accordance with the provisions set forth in Section 8.300.080 unless your Board acts to repeal it prior to that date.

Section 8.300.030. Moratorium

From and after the effective date of this Ordinance, no SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the unincorporated area of the County of Mendocino, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way within the unincorporated area of the

County of Mendocino.

Section 8.300.040 Violation

Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.04.110 of the Mendocino County Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

Section 8.300.050 Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter, including the application of such party or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

Section 8.300.060 Compliance With CEQA

The County finds that this Chapter is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

Section 8.300.070 Effective Date

The Clerk of the Board will publish the Ordinance codified in this Chapter as required by law. The Ordinance codified in this Chapter shall take effect immediately.

Section 8.300.080 Sunset Date

This ordinance shall sunset within thirty (30) days after both of the following conditions are met:

1. At the time PG&E offers to its customers an alternative to wireless advanced metering infrastructure devices; and
2. Information about the technology and risks associated with the specific model of advanced metering infrastructure device being proposed for installation is provided to customers residing in the unincorporated areas of the County."

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino,

State of California, on this 25th day of January, 2011, by the following roll call vote:

AYES:	Supervisors Brown, McCowen, Pinches, Smith, and Hamburg
NOES:	None
ABSENT:	None

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

Kendall Smith

KENDALL SMITH, Chair
Board of Supervisors

ATTEST: CARMEL J. ANGELO
Clerk of Said Board

By: _____
Deputy

APPROVED AS TO FORM:

JEANINE B. NADEL, County Counsel

By: _____
Deputy

I hereby certify that according to the provisions of Government Code sections 25103, delivery of this document has been made.

CARMEL J ANGELO
Clerk of the Board

By: _____
Deputy

Board of Supervisors: Temporary SmartMeter installation moratorium

Contributed by Lake County Board of Supervisors
Monday, 14 March 2011

BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA
ORDINANCE NO. 2942
AN ORDINANCE ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMART METERS AND RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE UNINCORPORATED AREA OF LAKE COUNTY

WHEREAS, the County of Lake (the “County”) through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety, and consumer protection; and

WHEREAS, the County has a franchise agreement with Pacific Gas and Electric (“PG&E”) that has been in effect since the 1950s; and

WHEREAS, in addition, the County retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities and, pursuant to California Public Utilities Code Section 6023, “ . . . may in such a franchise impose such other and additional terms and conditions not in conflict with this chapter, whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest”; and

WHEREAS, California Public Utilities Code Section 2902 reserves the County’s right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, “including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation”; and

WHEREAS, PG&E is now installing Smart Meters in central and northern California and is installing these meters in the County of Lake; and

WHEREAS, concerns about the impact and accuracy of Smart Meters have been raised nationwide, leading the Maryland Public Service Commission to deny permission of June 21, 2010 for the deployment of Smart Meters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state. The California Public Utilities Commission (“CPUC”) recently had before it a petition from the City and County of San Francisco and other municipalities seeking to delay the implementation of Smart Meters until questions about their accuracy can be evaluated; and

WHEREAS, major problems and deficiencies with Smart Meters in California have been brought to the attention of the Board of Supervisors of the County of Lake, including the significant concerns of many County residents as to the potential negative impacts to health and privacy. Additionally, this Board is aware of PG&E’s confirmation that Smart Meters have provided incorrect readings costing taxpayers untold thousands of dollars in overcharges and that PG&E’s records outlined “risks” and “issues” including an ongoing ability to recover real-time data because of faulty hardware from PG&E vendors; and

WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed information about the private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household’s activities: when people awake, when they come home, when they are on vacation, and even when they take a hot bath. Smart Meters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electric power without adequately protecting that data from being accessed by unauthorized persons or entities and, as such, these meters pose an unreasonable intrusion of utility customers’ privacy rights and security interests. The fact the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the United States Supreme Court in Kyllo v. United States (2001), 533 U.S. 27; and

WHEREAS, there is now evidence showing that problems with Smart Meters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies, and the public; and

WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (“EMF”) emitted by the wireless technology in Smart Meters, which will be in every house, apartment, and business, thereby adding more man-made EMF to our environment on a continuous basis; and

WHEREAS, Federal Communications Commission (“FCC”) safety standards do not exist for chronic long-term exposure to EMF or from multiple sources and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short-term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups, and doctors are calling for the use of caution in wireless technologies; and

WHEREAS, the primary justification given for the Smart Meters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire the, and enhanced customer education is a viable non-technological alternative to encourage electricity use timeshifting. Further, some engineers and energy conservation experts believe that the Smart Meter program could, in totality, actually increase total energy consumption and, therefore, the carbon footprint; and

WHEREAS, Assembly Member Jared Huffman has requested the California Council on Science and Technology to advise him on whether the FCC’s standards for Smart Meters are sufficiently protective and to assess whether additional technology-specific standards are needed for Smart Meters; and

WHEREAS, a response to Assembly Member Huffman from the Council on Science and Technology is expected in the near future; and

WHEREAS, Assembly Member Huffman has also recently introduced legislation (Assembly Bill 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless Smart Meter installed and to allow customers to opt out of wireless Smart Meter installation, including removal of existing Smart Meters when requested by the customer. Most importantly, the legislation would suspend deployment of Smart Meters until the CPUC meets the above requirements; and

WHEREAS, because the potential risks to the health, safety, and welfare of County residents are so great, the Board of Supervisors wishes to adopt a moratorium on the installation of Smart Meters and related equipment within the unincorporated area of the County of Lake. The moratorium period will allow the Council on Science and Technology and the legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with Smart Meters; and

WHEREAS, there is a current and immediate threat to public health, safety, and welfare because, without this urgency ordinance, Smart Meters or supporting equipment will be installed or constructed or modified in the County without PG&E’s compliance with the CPUC process for consultation with the local jurisdiction, the County’s Code requirements, and will subject residents of Lake County to the privacy, security, health, accuracy, and consumer fraud risks of this unproven Smart Meter technology; and

WHEREAS, the Board of Supervisors hereby finds that it can seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize the construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety, and general welfare. This Ordinance is, therefore, exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations; and

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency moratorium ordinance; and

WHEREAS, based on the foregoing, it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the Smart Meter technology and it is, therefore, appropriate to adopt a temporary moratorium which would remain in effect from the date of adoption until December 31, 2011, unless your Board acts to repeal it prior to that date.

NOW THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF LAKE, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

Section 1: Moratorium. From and after the effective date of this Ordinance, no Smart Meter may be installed in or on any home, apartment, condominium or business of any type within the unincorporated area of the County of Lake and no equipment related to Smart Meters may be installed in, on, under, or above any public street or public right-of-way within the unincorporated area of the County of Lake.

Section 2: Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Section 1.04.160 of the Lake County Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

Section 3: This Board of Supervisors finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) the moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort, and convenience and to preserve the public welfare; and (c) It is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance was well as to protect all citizens of Lake County by preserving and improving the aesthetic and economic conditions of the County.

Section 4: All ordinances or parts of ordinances or resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict and no further.

Section 5: This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) in that the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c)(3) in that the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6: This ordinance shall take effect immediately based on the findings by the Board of Supervisors that this ordinance is necessary for the protection of the public health, safety, and general welfare. This ordinance shall be in full force and effect from the date of its adoption by the Board of Supervisors until December 31, 2011 and which time its terms and provisions shall expire and no longer remain in effect.

The foregoing ordinance was passed and adopted by the Lake County Board of Supervisors on March 8, 2011.

AYES: Supervisors Smith, Farrington, Brown and Comstock

NOES: None

ABSENT OR NOT VOTING: Supervisor Rushing Absent

_____ Chair, Board of Supervisors

By:_____ ATTEST: KELLY F. COX Clerk of the Board of Supervisors

By:_____ APPROVED AS TO FORM: ANITA L. GRANT County Counsel

ORDINANCE NO. 3552
AN UNCODIFIED ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE UNINCORPORATED AREA OF MARIN COUNTY

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN FIND AS FOLLOWS:

WHEREAS, the County of Marin (the "County"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection; and

WHEREAS, the County of Marin has a franchise agreement with PG&E that has been in effect since the early 1950's; and

WHEREAS, in addition, the County retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions..., whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest;" and

WHEREAS, Public Utilities Code section 2902 reserves the County's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common - carriers operating within the limits of the municipal corporation;" and

WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is installing these meters within the County of Marin; and

WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state. The CPUC recently had before it a petition from the City and County of San Francisco, and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated; and

WHEREAS, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Board of Supervisors of the County of Marin, including PG&E's confirmation that SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors; and

WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they

come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed., the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in Kyllo v. United States (2001), 533 U.S. 27; and

WHEREAS, there is now evidence showing that problems with SmartMeters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies, and the public; and

WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and

WHEREAS, FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and

WHEREAS, the primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use timeshifting. Further, some engineers and energy conservation experts believe that the SmartMeters program -- in totality -- could well actually increase total electricity consumption and therefore the carbon footprint; and

WHEREAS, Assembly member Jared Huffman has requested the California Council on Science and Technology to advise him on whether the Federal Communications Commission's standards for SmartMeters are sufficiently protective and assess whether additional technology-specific standards are needed for SmartMeters; and

WHEREAS, a response to Assembly member Huffman from the Council on Science and Technology is expected in the near future; and

WHEREAS, Assembly Member Huffman has also recently introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeter installed and allow customers to opt-out of wireless SmartMeter installation, including removing existing SmartMeters where requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements; and

WHEREAS, this Board of Supervisors has sent letters to the President of the CPUC on July 20, 2010 and again on October 26, 2010 asking that the CPUC suspend PG&E's authority to deploy SmartMeters or related equipment in Marin County until certain reports now in process have been completed and reviewed and considered, and certain other conditions have been met; and

WHEREAS, there has been no response to either of these letters; and

WHEREAS, because the potential risks to the health, safety and welfare of County residents are so great, the Board of Supervisors wishes to adopt a moratorium on the installation of SmartMeters and related equipment within the unincorporated area of the County of Marin. The moratorium period will allow the Council on Science and Technology and legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters; and

WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the County without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the County's Code requirements, and subjecting residents of Marin County to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

WHEREAS, the Board of Supervisors hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations; and

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency moratorium ordinance; and

WHEREAS, based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the SmartMeter technology; therefore it is appropriate to adopt a temporary moratorium that would remain in effect from the date of its adoption until December 31, 2011, unless your Board acts to repeal it prior to that date.

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Marin as follows:

SECTION I

Moratorium. From and after the effective date of this Ordinance, no SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the unincorporated area of the County of Marin, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way within the unincorporated area of the County of Marin.

SECTION II

Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Section 1.04.270 of the Marin County Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

SECTION III

This Board of Supervisors finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) the moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of Marin County by preserving and improving the aesthetic and economic conditions of the County.

SECTION IV

If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the Board of Supervisors that such portions of such ordinance be severable from the remainder and the remainder be given full force and effect.

SECTION V

This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c) (2) — the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c) (3) — the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION VI

Effective Dates. This ordinance shall take effect immediately based on the findings by the Board of Supervisors that this ordinance is necessary for the protection of the public health, safety, and general welfare. This ordinance shall be in full force and effect from the date of its adoption by the Board of Supervisors until December 31, 2011, at which time its terms and provisions shall expire and no longer remain in effect.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 4th day of January 2011 by the following vote:

AYES: SUPERVISORS Judy Arnold, Charles McGlashan, Steve Kinsey, Susan Adams
NOES: NONE
ABSENT: SUPERVISOR Harold C. Brown, Jr.

Susan L Adams
PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK

ORDINANCE NO. 5084

AN UNCODIFIED ORDINANCE OF THE COUNTY OF SANTA CRUZ ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE UNINCORPORATED AREA OF SANTA CRUZ COUNTY

The Board of Supervisors of the County of Santa Cruz find as follows:

WHEREAS, the County of Santa Cruz (the "County"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection; and

WHEREAS, the County of Santa Cruz has a franchise agreement with PG&E that has been in effect since 1955; and

WHEREAS, in addition, the County retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions…, whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest;" and

WHEREAS, Public Utilities Code section 2902 reserves the County's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation;" and

WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is installing these meters within the County of Santa Cruz; and

WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state. The CPUC currently has pending before it a petition from the City and County of San Francisco, and other municipalities, seeking to delay

the implementation of SmartMeters until the questions about their accuracy can be evaluated; and

WHEREAS, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Board of Supervisors of the County of Santa Cruz, including PG&E's confirmation that SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors; and

WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27; and

WHEREAS, there is now evidence showing that problems with SmartMeters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies, and the public; and

WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional human-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and

WHEREAS, FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and

WHEREAS, the primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use timeshifting. Further, some engineers and energy conservation experts believe that the SmartMeters program--in totality--could well actually increase total electricity consumption and therefore the carbon footprint; and

WHEREAS, Assembly member Jared Huffman has requested the California Council on Science and Technology to advise him on whether the Federal Communications Commission's standards for SmartMeters are sufficiently protective and assess whether additional technology-specific standards are needed for SmartMeters; and

WHEREAS, a response to Assembly member Huffman from the Council on Science and Technology is expected in the near future; and

WHEREAS, Assembly Member Huffman has also recently introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeter installed and allow customers to opt-out of wireless SmartMeter installation, including removing existing SmartMeters where requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements; and

WHEREAS, this Board of Supervisors sent a letter to the CPUC on September 15, 2010 expressing concern about reports that SmartMeter technology was interfering with the proper functioning of common household devices and requesting a response from the CPUC; and

WHEREAS, there has been no response by the CPUC to the letter sent by the Board of Supervisors; and

WHEREAS, because the potential risks to the health, safety and welfare of County residents are so great, the Board of Supervisors wishes to adopt a moratorium on the installation of SmartMeters and related equipment within the unincorporated area of the County of Santa Cruz. The moratorium period will allow the Council on Science and Technology and legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters; and

WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the County without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the County's Code requirements, and subjecting residents of Santa Cruz County to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

WHEREAS, the Board of Supervisors hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency moratorium ordinance; and

WHEREAS, based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the SmartMeter technology; therefore it is appropriate to adopt a temporary moratorium that would remain in effect from the date of its adoption until December 31, 2011, unless your Board acts to repeal it prior to that date.

NOW, THEREFORE BE IT ORDAINED by the Board of Supervisors of the County of Santa Cruz as follows:

SECTION I

Moratorium. From and after the effective date of this Ordinance, no SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the unincorporated area of the County of Santa Cruz, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way within the unincorporated area of the County of Santa Cruz.

SECTION II

Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.12 of the Santa Cruz County Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

SECTION III

This Board of Supervisors finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) the moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of Santa Cruz County by preserving and improving the aesthetic and economic conditions of the County.

SECTION IV

If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the Board of Supervisors that such portions of such ordinance be severable from the remainder and the remainder be given full force and effect.

SECTION V

This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c) (2) – the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c) (3) – the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION IV

Effective Dates. This ordinance shall take effect immediately based on the findings by the Board of Supervisors that this ordinance is necessary for the protection of the public health, safety, and general welfare. This ordinance shall be in full force and effect from the date of its adoption by the Board of Supervisors until December 31, 2011, at which time it's terms and provision shall expire and no longer remain in effect.

PASSED AND ADOPTED THIS 11th day of January, 2011, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS Leopold, Caput, Pirie, Coonerty and Stone
NOES: SUPERVISORS None
ABSENT: SUPERVISORS None
ABSTAIN: SUPERVISORS None

MARK W. STONE
Chairperson of the Board of Supervisors

Attest: TESS FITZGERALD
Clerk of the Board

APPROVED AS TO FORM:
D. McRae
County Counsel

I HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE ATTEST MY HAND AND SEAL THIS 11th DAY OF January 20 11
SUSAN A. MAURIELLO, COUNTY ADMINISTRATIVE OFFICER AND EX OFFICIO CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, CALIFORNIA.
BY Alicia Muriello DEPUTY

COPY

URGENCY ORDINANCE NO. 952

AN UNCODIFIED ORDINANCE OF THE CITY OF CAPITOLA ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY MORATORIUM ON THE INSTALLATION OF PG&E SMARTMETERS AND RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE CITY OF CAPITOLA

The City Council of the City of Capitola finds as follows:

A. WHEREAS, the City of Capitola ("City") through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection; and

B. WHEREAS, the City has a franchise agreement with PG&E that has been in effect since April 18, 1949; and

C. WHEREAS, in addition, the City retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code Section 6203, "may in such a franchise impose such other and additional terms and conditions.. " whether governmental or contractual, as in the judgment of the legislative body are to the public interest;" and

D. WHEREAS, Public Utilities Code section 2902 reserves the City's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation;" and

E. WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and is installing these meters within the City of Capitola; and

F. WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state; and

G. WHEREAS, major problems and deficiencies with PG&E SmartMeters in California have been brought to the attention of the City Council of the City of Capitola, including PG&E's confirmation that its SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges. In addition, PG&E records outline "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors; and

H. WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed information about private aspects of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by

unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001),533 U.S. 27; and

I. WHEREAS, there is now evidence showing that problems with SmartMeters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies, and the public; and

J. WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional human-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and

K. WHEREAS, FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc, Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and

L. WHEREAS, the primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use timeshifting. Further, some engineers and energy conservation experts believe that the SmartMeters program could well actually increase total electricity consumption and therefore the carbon footprint; and

M. WHEREAS, Assembly member Jared Huffman has recently introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeter installed and allow customers to opt-out of wireless SmartMeter installation, including removing existing SmartMeters where requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements; and

N. WHEREAS, the City Council of the City of Capitola on September 23, 2010 adopted a resolution demanding PG&E halt the installation of SmartMeters and related equipment within the City of Capitola until concerns regarding the accuracy and safety of the SmartMeters is addressed and demanding that PG&E implement mechanisms to allow residents to opt-out and remove SmartMeters from resident's houses who do not want them; and

O. WHEREAS, PG&E has declined to honor the City's request in this regard; and

P. WHEREAS, because the potential risks to the health, safety and welfare of City residents are so great the City Council wishes to adopt a moratorium on the installation of PG&E SmartMeters and related equipment within the City of Capitola. The moratorium period will allow the legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with these SmartMeters; and

Q. WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, PG&E SmartMeters or supporting equipment will be installed or constructed or modified in the City and will subject residents of Capitola to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

R. WHEREAS, the City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations; and

S. WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency moratorium ordinance; and

T. WHEREAS, based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the SmartMeter technology; therefore it is appropriate to adopt a temporary moratorium that would remain in effect from the date of its adoption through December 31, 2011, unless the City Council acts to repeal it prior to that date.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Capitola as follows:

Section 1. Moratorium. From and after the effective date of this Ordinance, no PG&E SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the City of Capitola, and no equipment related to PG&E SmartMeters may be installed in, on, under, or above any public street or public right of way within the City of Capitola.

Section 2. Violations of this moratorium may be charged as infractions or misdemeanors as set forth in Chapter 4.04 of the Capitola Municipal Code. In addition, violations shall be deemed public nuisances, with enforcement and abatement by injunction or any other remedy authorized by law.

Section 3. The City Council finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) this moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of the City of Capitola by preserving and improving the aesthetic and economic conditions of the City.

Section 4. If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the City Council that such portions of such ordinance shall be severable from the remainder and the remainder be given full force and effect.

Section 5. This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) - the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c)(3) - the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6. Effective Dates. This ordinance shall take effect immediately based on the findings by the City Council that this ordinance is necessary for the protection of the public health, safety, and general welfare. This ordinance shall be in full force and effect from the date of its adoption by the City Council through December 31, 2011, at which time its terms and provision shall expire and no longer remain in effect.

This ordinance was passed and adopted on the 10th day of February, 2011, as an Urgency Ordinance to be effective immediately, by the following vote:

AYES:	Council Members Harlan, Termini, Storey, and Mayor Norton
NOES:	Council Member Nicol
ABSENT:	None
ABSTAIN:	None
DISQUALIFIED:	None

APPROVED:

Dennis R. Norton, Mayor

ATTEST:

Pamela Greeninger, MMC
Pamela Greeninger, City Clerk

This is to certify that the above and foregoing is a true and correct copy of Urgency Ordinance No. 952 passed and adopted by the City Council on the 10th day of February, 2011.

Pamela Greeninger, MMC, City Clerk

RESOLUTION NO. 11-018 C.S.

A RESOLUTION OF THE COUNCIL OF THE CITY OF MONTEREY DEMANDING PG&E HALT THE INSTALLATION AND ACTIVATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE CITY OF MONTEREY

WHEREAS, Pacific Gas and Electric Company (PG&E) is now installing SmartMeters in Central and Northern California and will be installing these meters within the City; and

WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised at public hearings for the City of Monterey; and

WHEREAS, major problems with SmartMeters in California have been brought to the attention of the City Council of the City of Monterey, including:

- The flow of gas and electricity into homes discloses private detailed information. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of electrical power used without adequately protecting that data from being accessed by unauthorized persons and as such pose an unreasonable intrusion into resident's privacy and security interests;

- Significant health questions have been raised by constituents concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment, and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONTEREY that it hereby resolves as follows: The City Council demands PG&E immediately halt the installation and activation of SmartMeters on any and all homes, apartments, condominiums, or businesses of any type, within the City of Monterey, and no equipment related to Smart Meters be installed in, on, or above any public street or public right-of-way within the City of Monterey until concerns regarding safety of the SmartMeters is addressed.

BE IT FURTHER RESOLVED that the City Council finds that freedom of choice is an important fundamental right of the citizens of the City of Monterey. The lack of an opt-out provision in the current PG&E SmartMeter Program is unacceptable. Should PG&E continue to pursue the SmartMeter Program within the City of Monterey, Council demands that PG&E respects the will of those residents who prefer to opt-out of the program, and remove the existing SmartMeters from houses of residents who do not want them.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 1st day of March, 2011, by the following votes:

AYES:	5	COUNCILMEMBERS:	Della Sala, Downey, Haferman, Selfridge, Sollecito
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None

ATTEST:

City Clerk thereof

APPROVED

Mayor of said City

CITY OF SEASIDE

CITY COUNCIL

ORDINANCE NO. 998

AN UNCODIFIED ORDINANCE OF THE CITY OF SEASIDE ADOPTED AS AN URGENCY MEASURE IMPOSING A TEMPORARY MORATORIUM ON THE INSTALLATION OF PG&E SMARTMETERS AND RELATED EQUIPMENT IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND OTHER PLACES WITHIN THE CITY OF SEASIDE

WHEREAS, the City of Seaside through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to, matters of public health, safety and consumer protection; and

WHEREAS, the City has a franchise agreement with PG&E that has been in effect since November 29, 1954; and

WHEREAS, in addition, the City retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code Section 6203, "...may in such a franchise impose such other and additional terms and conditions...whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."; and

WHEREAS, Public Utilities Code section 2902 reserves the City's right to supervise and regulate public utilities in matters affective the health, convenience and safety of the general public, "...such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."; and

WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and in installing these matters within the City of Seaside; and

WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010, for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state; and

WHEREAS, major problems and deficiencies with PG&E SmartMeters in California have been brought to the attention of the City Council of the City of Seaside, including PG&E's confirmation that its SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges. In addition, PG&E records outline "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors; and

WHEREAS, the ebb and flow of gas and electricity into homes discloses details information about private aspects of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities; when people wake up, when they come home, when they go on vacation, and

even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27; and

WHEREAS, there is now evidence showing that problems with SmartMeters could adversely impact the amateur radio communication network that operates throughout California and neighboring states, as well as other radio emergency communication systems that serve first responders, government agencies and the public; and

WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional human-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and

WHEREAS, FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technology; and

WHEREAS, the primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use timeshifting. Further, some engineers and energy conservation experts believe that the SmartMeters program could well actually increase total electricity consumption and therefore the carbon footprint; and

WHEREAS, Assembly member Jared Huffman has recently introduced legislation (AB 37) which would add a section to the Public Utilities Code to require the CPUC to identify alternative options for customers who do not wish to have a wireless SmartMeter installed and allow customers to opt-out of wireless SmartMeter installation, including removing existing SmartMeters where requested by the customer. Most importantly, the legislation would suspend deployment of SmartMeters until the CPUC meets the above requirements; and

WHEREAS, because the potential risks to the health, safety and welfare of City residents are so great the City Council wishes to adopt a moratorium on the installation of PG&E SmartMeters and related equipment within the City of Seaside. The moratorium period will allow the legislative process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with these SmartMeters; and

WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, PG&E SmartMeters or supporting equipment will be installed or constructed or modified in the City and will subject residents of Seaside to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

WHEREAS, the City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations; and

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better with a less burdensome or restrictive effect than the adoption of this interim urgency moratorium ordinance; and

WHEREAS, based on the foregoing it is in the best interest of public health, safety and welfare to allow adequate study of the impacts resulting from the SmartMeter technology; therefore it is appropriate to adopt a temporary moratorium that would remain in effect from the date of its adoption through December 31, 2011, unless City Council acts to repeal it prior to that date.

NOW, THEREFORE, BE IT ORDAINED by the NOW THEREFORE, the City Council of the City of Seaside does hereby ordain as follows:

SECTION ONE

From and after the effective date of this Ordinance, no PG&E SmartMeter may be installed in or on any home, apartment, condominium or business of any type within the City of Seaside, and no equipment related to PG&E SmartMeters may be installed in, on, under, or above any public street or public right of way within the City of Seaside.

SECTION TWO

Violations of this moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.16 of the Seaside Municipal Code. In addition, violations shall be deemed public nuisances, with enforcement and abatement by injunction or any other remedy authorized by law.

SECTION THREE

The City Council finds and determines that: (a) there is a current and immediate threat to the public peace, health, or safety; (b) this moratorium must be imposed in order to protect and preserve the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents of landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of the City of Seaside by preserving and improving the aesthetic and economic conditions of the City.

SECTION FOUR

If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the City Council that such portions of such ordinance shall be severable from the remainder and the remainder be given full force and effect.

SECTION FIVE

This interim ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) - the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment and Section 15060(c)(3) - the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION SIX

This ordinance shall take effect immediately based on the findings by the City Council that this ordinance is necessary for the protection of the public health, safety, and general welfare. This ordinance shall be in full force and effect from the date of its adoption by the City Council through December 31, 2011, at which time its terms and provision shall expire and no longer remain in effect.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on 3rd day of March, 2011, by the following role call vote:

AYES: COUNCIL MEMBERS: Alexander, Edwards, Oglesby, Bloomer and Bachofner
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

APPROVED:

Felix H. Bachofner, Mayor

ATTEST:

Maricela Hernandez, City Clerk

ORDINANCE NO. 752

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED AS AN URGENCY MEASURE ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE TOWN OF FAIRFAX OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE TOWN OF FAIRFAX, AND DECLARING THE URGENCY THEREOF

The Town Council of the Town of Fairfax, California does ordain as follows:

Section I. Findings:

A. The Town of Fairfax (the "Town"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection.

B. In addition, the Town retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions…, whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."

C. Further, Public Utilities Code section 2902 reserves the Town's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."

D. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and will be installing these meters in Fairfax in the very near future. PG&E has already installed antennae to support the SmartMeter system at four sites within the public rights of way in the Town without obtaining permits from the Town as required by Section19.04 of the Town Code. Further, PG&G did not comply with Section XIV of General Order 131-D of the California Public Utilities Commission (the "CPUC"), which requires a utility to consult with the local jurisdiction on land use matter prior to locating its facilities.

E. Concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The CPUC currently has pending before it a petition from the City and County of San Francisco, the Town of Fairfax and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated.

F. Indeed, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Fairfax Town Council, including PG&E's confirmation that SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.

G. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27.

H. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.

I. FCC safety standards exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc.. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies.

J. Because the potential risks to the health, safety and welfare of Fairfax residents are so great, the Fairfax Town Council wishes to adopt a six month moratorium on the installation of SmartMeters and related equipment within the Fairfax Town Limits. The six-month period will allow the CPUC petition process referenced in Recital E above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.

K. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the Town without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the Town's Code requirements, and subjecting residents of Fairfax to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.

L. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section II. Moratorium

1. No SmartMeter may be installed in or on any home, apartment, condominium or business in Fairfax, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the Town for six months from the date of this Ordinance, at which time the Fairfax Town Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

2. Violations of this Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.08.010 of the Town Code or as administrative citations as set forth in Chapter 1.10 of the Town Code, in the discretion of the Town. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

3. The Fairfax Town Manager is hereby authorized to direct all Town Departments, including the Town Attorney, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

Section III. Effectiveness

This Ordinance, being adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare and containing a declaration of the facts constituting the urgency, upon passage by a minimum four-fifths (4/5) vote of the Town Council, shall take effect immediately upon its adoption and shall continue in effect until modified or rescinded.

Section IV. Severability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

Section V. Publication

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building; which places are designated for that purpose.

The foregoing ordinance was duly adopted on the 4th day of August, 2010, by the following vote, to wit:

AYES:
NOES:
ABSENT:

_____
LEW TREMAINE, MAYOR

Attest:

_____
Town Clerk

Agenda Item No. 22.

TOWN OF ROSS

ORDINANCE NO. 623
AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ROSS ADOPTED AS AN URGENCY MEASURE ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE TOWN OF ROSS OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE TOWN OF ROSS, AND DECLARING THE URGENCY THEREOF

The Town Council of the Town of Ross, California does ordain as follows:

Section I. Findings:

A. The Town of Ross ("Town"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection.

B. The Town has a franchise agreement with PG&E that has been in effect since September 7, 1940.

C. In addition, the Town retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions..., whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."

D. Further, California Public Utilities Code section 2902 reserves the Town's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."

E. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and installing these meters in Ross at the present time. Concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state. The CPUC currently has pending before it a petition from the City and County of San Francisco, the Town of Fairfax and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated.

F. Indeed, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Ross Town Council, including PG&E's confirmation that

SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.

G. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo* v. *United States* (2001), 533 U.S. 27.

H. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.

I. FCC safety standards **do not** exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal ceil growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies.

J. The primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Further, some engineers and energy conservation experts believe that the SmartMeters program—in totality—could well actually increase total electricity consumption and therefore the carbon footprint.

K. On August 13, 2010 and December 16, 2010 the Ross Town Council sent letters asking PG&E and CPUC to suspend the installation of SmartMeters in the Town of Ross until the California Council on Science and Technology fully completes its examination of SmartMeter health issues and assesses the adequacy of current standards.
There has been no response to those requests

L. Because the potential risks to the health, safety and welfare of Ross residents are so great, the Ross Town Council wishes to adopt a **twelve-month** moratorium on the installation of SmartMeters and related equipment within the Town Limits. The **twelve-month** period will allow the CPUC petition process referenced in Recital E above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.

M. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or

constructed or modified in the Town without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the Town's Code requirements, and subjecting residents of Ross to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.

N. Assemblyman Huffman has introduced Assembly Bill 37, which directs the CPUC to determine alternatives for customers who do not wish to have SmartMeters installed, as well as directs the utilities to disclose information about SmartMeters to consumers, including magnitude and duration of radio frequency emissions.

O. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section II**.** Moratorium

1. No SmartMeter may be installed in or on any home, apartment, condominium or business in Ross, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the Town for **twelve** months from the date of this Ordinance, at which time the Ross Town Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

2. Violations of this Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.04 of the Town Code. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

3. The Ross Town Manager is hereby authorized to direct all Town Departments to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

Section III**.** Effectiveness

This Ordinance, being adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare and containing a declaration of the facts constituting the urgency, upon passage by a minimum four-fifths (4/5) vote of the Town Council, shall take effect immediately upon its adoption and shall continue in effect for twelve months or unless modified or rescinded.

Section IV. Severability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

Section V. Adoption

The foregoing ordinance was duly passed and adopted at a regular meeting of the Ross Town Council held on the 10th day of February 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Christopher Martin, Mayor

ATTEST:

_____
Gary Broad, Town Manager

RESOLUTION NO. 63-10

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DECLARING CONCERNS REGARDING THE INSTALLATION OF PG&E "SMART METERS" IN MORRO BAY

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, on July 20, 2006, the California Public Utilities Commission approved the request of Pacific Gas & Electric (PG&E) to install advanced metering infrastructure (AMI), which includes replacing existing electric meters with so-called "Smart Meters"; and

WHEREAS, the City Council understands that PG&E has begun installing the Smart Meters in the San Luis Obispo area; and

WHEREAS, citizens of Morro Bay have expressed concerns about the installation of Smart Meters relating to health concerns and privacy; and

WHEREAS, the City Council understands the Public Utilities Commission, in approving the Smart Meters program, did not consider possible health impacts or give adequate consideration to privacy concerns; and

WHEREAS, the meters will be installed on private property and many homeowners and businesses have no knowledge of the planned installation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that

1. The City of Morro Bay urges PG&E not to install, for a period not less than one hundred eighty (180) days, any Smart Meters, repeaters, antennas and any related wireless equipment in Morro Bay until PG&E has provided local residents additional information on the planned installation.
2. The City of Morro Bay urges PG&E and the California Public Utilities Commission to provide an appropriate mechanism and forum for local residents to voice their positions for or against Smart Meters before any Smart Meters are installed in Morro Bay.
3. The City Council of Morro Bay urges PG&E to modify its Smart Meters program to provide that individuals may choose not to have wireless Smart Meters installed on their properties or use hard wire types.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of December, 2010 on the following vote:

AYES:
NOES:
ABSENT:

_____
JANICE PETERS, Mayor

ATTEST:

_____
BRIDGETT KESSLING, City Clerk

RESOLUTION NO. 68-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND SUPPORTING OUTREACH AND EDUCATION REGARDING SMART METERS TO PREVENT POWER SERVICE DISCONNECTIONS AND URGING A MORATORIUM ON NEW SMART METER INSTALLATIONS PENDING THE OUTCOME OF AN INVESTIGATION BY THE PUBLIC UTILITIES COMMISSION

WHEREAS, the City of Richmond desires to protect its citizens from losing essential services such as power and utilities; and

WHEREAS, data from the Division of Ratepayer Advocates has shown an increase in PG&E's disconnections of service compared to the past year, particularly after the installation of Advanced Metering Infrastructure (AMI) or Smart Meters in April of 2009; and

WHEREAS, numerous complaints have been sent to consumer advocacy groups such as TURN (Toward Utility Rate Normalization) regarding skyrocketing bills that arose after the installation of Smart Meters; and

WHEREAS, according to TURN, there are some cases where plausible explanations have not yet been given to justify these increased power bills; and

WHEREAS, according to the California Public Utilities Commission (CPUC), approximately 1000 complaints have been received regarding Smart Meters; and

WHEREAS, Pacific Gas and Electric Company (PG&E) has admitted there are problems with Smart Meters such as non-functional, non-communicative or problematically installed Smart Meters; and

WHEREAS, heightened consumer protections, in the form of educational assistance, monetary assistance, and communication with customers, are key to preventing and limiting disconnections from essential utility services and possible overbillings; and

WHEREAS, The City of Richmond supports suspension of remote disconnections while the Public Utilities Commission conducts its investigation into the use of Smart Meters; now

THEREFORE BE IT RESOLVED, that the Richmond City Council calls upon the CPUC to develop additional consumer protections to prevent service disconnections in the form of improved education, communication, and monetary assistance programs in cases of financial hardship; and

BE IT FUTHER RESOLVED, that the Richmond City Council supports a moratorium on new Smart Meter installations, consistent with TURN's consumer advocacy efforts, as well as suspending remote disconnections until the CPUC ordered independent investigation on Smart Meters has issued its findings; and

AND BE IT FINALLY RESOLVED that the City Manager is directed to send a copy of this resolution and a cover letter to the Commissioners and Executive Director of the California Public Utilities Commission (CPUC).

I certify that the foregoing resolution was passed and adopted by the City Council of the City of Richmond at a City Council meeting held on June 1, 2010, by the following vote:

AYES:	Councilmembers Bates, Butt, Lopez, Vice Mayor Ritterman, Rogers, Viramontes, and Mayor McLaughlin.
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

DIANE HOLMES
Clerk of the City of Richmond

[Seal]

APPROVED

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 68-10**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 1, 2010.

ATTACHMENT C

ECONOMICS AND TECHNOLOGY, INC.

LEE L. SELWYN
PRESIDENT

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MEMORANDUM

To: James M. Tobin, Esq.

From: Lee L. Selwyn

Re: Cal. PUC Application (A.)11-03-014, PG&E SmartMeter Opt-Out Proposal

Date: April 22, 2011

You have requested that I review the March 24, 2011 testimony submitted by Pacific Gas & Electric (PG&E) in the above-referenced proceeding and, in particular, the cost studies being proffered in support of PG&E's rate proposal. While I have not examined this material in great detail, there are certain obvious shortcomings that will need to be carefully scrutinized.

(1) The PG&E cost analysis is premised upon individual customer opt-outs, rather than on community-wide opt-outs. Community level opt-outs will be considerably less costly on a per-customer basis due to the significantly lower per-customer cost of conventional meter reading, when every customer in an area can be canvassed *en masse*, rather than requiring individual premises visits to isolated individual customers. Costs could be lower still, both for individual as well as for community-level opt-outs, if the Commission is willing to consider alternative methods for obtaining customer usage information that do not involve monthly premises visits by PG&E.

(2) The PG&E cost analysis is also premised upon the SmartMeters having already been deployed, thus requiring their physical removal and replacement. If the opt-out option is exercised prior to SmartMeter deployment, the existing analog meter can continue to be used, and no equipment removal and replacement would be required. In such an event, the only costs involved would be of a recurring nature, relating to meter reading and other exception processing and administration. Moreover, whatever additional up-front and recurring costs might be engendered by a customer's or a community's decision to opt-out prior to the installation of the SmartMeter(s) must then be offset by the costs that PG&E avoids by not having to install any SmartMeters in those situations. However, because PG&E's cost study failed to even address such pre-installation opt-outs, it afforded no consideration whatsoever to these avoided costs.

(3) There is no particular basis for the assumption regarding the number of customers that will individually elect to opt-out of the SmartMeter program. The decision to opt-out is likely to be

highly price-elastic, suggesting an inverse relationship between the price (initial and recurring) of the opt-out option and the number of customers likely to exercise it. To the extent that the costs are themselves heavily linked to the "demand" for opt-out, there is no basis upon which the accuracy of the cost studies proffered by PG&E could be confirmed.

(4) Community-level decision to opt-out is not simply a scaled-up version of individual opt-out decisions. For example, Marin County Ordinance No. 3552 expresses concerns regarding customer privacy and the potential for information on the customer's electricity and gas usage to be intercepted by unauthorized persons. If limited to individual opt-outs, that concern would also apply as to those customers who elect *not* to have a SmartMeter, the absence of which could also be detected. Community-level opt-out overcomes this concern.

You have also asked me to review the "Bench Analysis" issued yesterday (April 21) by the Maine PUC staff regarding a SmartMeter opt-out plan proposed by the Central Maine Power Company (CMP). My review is necessarily preliminary, and I have not had an opportunity to examine the underlying cost studies undertaken by CMP or by the MPUC staff. The CMP proposal, like PG&E's, focuses upon *individual* rather than community opt-out decisions, and the MPUC Bench Analysis is confined to the individual opt-out option. Like the PG&E cost study, the CMP study is also premised upon an *assumed* take rate of 9,000 customers, apparently giving no effect to price elasticity issues. That said, the approach being proposed in Maine does distinguish between situations in which the SmartMeter has already been deployed vs. the case where the customer elects to opt-out prior to any such installation. The proposed initial and recurring charges for the opt-out as recommended in the Bench Analysis are also considerably lower than those being proposed by PG&E. Customers choosing to opt-out would be offered two choices: (1) Retain their existing meter, at an initial charge of $40 plus a monthly recurring charge of $12, or (2) get a SmartMeter but have CMP disable the "transmitter" function, at an initial charge of $20 plus a monthly charge of $10.50. Customers not electing to opt-out prior to SmartMeter installation would be assessed an additional $25 charge. There is no volumetric charge in the Maine PUC plan.

Both the CMP and PG&E plans would require on-site monthly meter reading for customers who opt-out of the SmartMeter program. It is unclear as to why this would be necessary. Customers could be furnished with a mail-in, phone-in, or web-based device by which they could provide the utility with their current meter reading, subject to periodic (e.g., quarterly or perhaps even semi-annually) site visits and audits. It is also noteworthy that neither utility has addressed the potential use of their customers' existing broadband service in lieu of RF transmission to convey the SmartMeter data. According to the FCC's Report on *"Internet Access Service: Status as of December 31, 2009*, high-speed Internet access (at speeds of at least 200 kbps in at least one direction) was in place at some 69% of all California households; the penetration rate is likely even higher today, Establishing a communications path between PG&E and its customers utilizing this existing resource would significantly reduce the need for RF transmissions while at the same time affording customers and communities unwilling to accept RF-based SmartMeters the full SmartMeter functionality. It could also considerably reduce the costs of the SmartMeter program.

I hope that these preliminary observations are helpful, and would be happy to discuss them with you at greater length.

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January 24, 2012

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94012

Re: PG&E SmartMeter Opt-out Application, A.11-03-014

Dear Commissioners:

I am writing in regard to the status of the above referenced matter.

Enclosed herewith is a petition signed by Bay Area elected officials urging the Commission to further examine President Peevey's revised Smart Meter Opt-Out Proposed Decision currently on the agenda for the Commission's February 1st meeting. This petition has received the support of the Lake County Board of Supervisors, the Marin County Board of Supervisors, the Santa Cruz Board of Supervisors, the Fairfax Town Council, the Ross Town Council and other individual elected officials.

As set forth in the petition, our jurisdictions remain concerned that the Proposed Decision imposes a discriminatory fee against opt-out customers who have a medical reason to avoid EMF exposure in direct violation of California Public Utility Code section 453(b). In that regard the American Academy of Environmental Medicine (AAEM) recently endorsed a moratorium on wireless Smart Meter installations due to continuing questions about their long term effects on human health. A copy of the AAEM letter urging a moratorium is enclosed herewith. Given the level of concern in our communities, there will undoubtedly be many thousands of customers who will elect to opt-out based upon individual medical concerns and they should not, and cannot, be forced to pay a fee to do so.

The proposed decision also lacks supporting data to substantiate the fees proposed to be charged. While these fees are slated to be reconsidered in Phase 2, customers should not be required to pay the fee until the actual cost, if any, is established by the data. It is also significant to note that less expensive alternatives such as customer self reporting through the internet have not been given any consideration whatsoever and should also be considered in Phase 2.

Given the fact that the Proposed Decision will be implemented in phases, we also strongly urge the Commission to issue an order which directs Pacific Gas and Electric to halt installation in those jurisdictions that have enacted moratoriums until local permitting procedures are considered in Phase 2.

Without such an order, public safety concerns will continue and the opt-out procedure will be far more costly than it would otherwise be as thousands of analog meters will be unnecessarily removed. Hence, it is imperative that the Commission issue an interim order staying installation of wireless Smart Meters in moratorium communities pending final consideration of the issue by the Commission.

Thank you for your time and consideration.

Respectfully yours,

LARRY BRAGMAN

LB:ja
Enclosures

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January 19, 2012

Decision Proposed Decision of Commissioner Peevy (Mailed 11/22/2011)
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
On the proposed decision 11-03-014

Dear Commissioners:

The Board of the American Academy of Environmental Medicine opposes the installation of wireless "smart meters" in homes and schools based on a scientific assessment of the current medical literature (references available on request). Chronic exposure to wireless radiofrequency radiation is a preventable environmental hazard that is sufficiently well documented to warrant immediate preventative public health action.

As representatives of physician specialists in the field of environmental medicine, we have an obligation to urge precaution when sufficient scientific and medical evidence suggests health risks which can potentially affect large populations. The literature raises serious concern regarding the levels of radio frequency (RF - 3KHz – 300 GHz) or extremely low frequency (ELF – 300Hz) exposures produced by "smart meters" to warrant an immediate and complete moratorium on their use and deployment until further study can be performed. The board of the American Board of Environmental Medicine wishes to point out that existing FCC guidelines for RF safety that have been used to justify installation of "smart meters" only look at thermal tissue damage and are obsolete, since many modern studies show metabolic and genomic damage from RF and ELF exposures below the level of intensity which heats tissues. The FCC guidelines are therefore inadequate for use in establishing public health standards. More modern literature shows medically and biologically significant effects of RF and ELF at lower energy densities. These effects accumulate over time, which is an important consideration given the chronic nature of exposure from "smart meters". The current medical literature raises credible questions about genetic and cellular effects, hormonal effects, male fertility, blood/brain barrier damage and increased risk of certain types of cancers from RF or ELF levels similar to those emitted from "smart meters". Children are placed at particular risk for altered brain development, and impaired learning and behavior. Further, EMF/RF adds synergistic effects to the damage observed from a range of toxic chemicals. Given the widespread, chronic, and essentially inescapable ELF/RF exposure of everyone living near a "smart meter", the Board of the American Academy of Environmental Medicine finds it unacceptable from a public health standpoint to implement this technology until these serious medical concerns are resolved. We consider a moratorium on installation of wireless "smart meters" to be an issue of the highest importance.

The Board of the American Academy of Environmental Medicine also wishes to note that the US NIEHS National Toxicology Program in 1999 cited radiofrequency radiation as a potential carcinogen. Existing safety limits for pulsed RF were termed "not protective of public health" by the Radiofrequency Interagency Working Group (a federal interagency working group including the FDA, FCC, OSHA, the EPA and others). Emissions given off by "smart meters" have been *classified by the World Health Organization International Agency for Research on Cancer (IARC) as a Possible Human Carcinogen*.

Hence, we call for:

- An immediate moratorium on "smart meter" installation until these serious public health issues are resolved. Continuing with their installation would be extremely irresponsible.
- Modify the revised proposed decision to include hearings on health impact in the second proceedings, along with cost evaluation and community wide opt-out.
- Provide immediate relief to those requesting it and restore the analog meters.

Members of the Board
American Academy of Environmental Medicine

County of Santa Cruz

0257

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Poki Stewart Namkung, M.D., M.P.H.
Health Officer
Public Health Division

Memorandum

Date: January 13, 2012

To: Santa Cruz County Board of Supervisors

From: Poki Stewart Namkung, M.D., M.P.H. PSN
Health Officer

Subject: Health Risks Associated With SmartMeters

Overview

On December 13, 2011, Santa Cruz County Board of Supervisors directed the Public Health Officer to return on January 24, 2012, with an analysis of the research on the health effects of SmartMeters.

Background

In order to analyze the potential health risks associated with SmartMeters, the following questions should be asked:

1) What is the SmartMeter system and what is the potential radiation exposure from the system?
2) What scientific evidence exists about the potential health risks associated with SmartMeters?
3) Are there actions that the public might take to mitigate any potential harm from SmartMeters?

SmartMeters are a new type of electrical meter that will measure consumer energy usage and send the information back to the utility by a wireless signal in the form of pulsed frequencies within the 800 MHz to 2400MHz range, contained in the microwave portion of the electromagnetic spectrum. SmartMeters are considered part of 'smart grid' technology that includes: a) a mesh network or series of pole-mounted wireless antennas at the neighborhood level to collect and transmit wireless information from all SmartMeters in that area back to the utility; b) collector meters, which are a special type of SmartMeter that collects the radiofrequency or microwave radiation signals from many surrounding

buildings (500-5000 homes or buildings) and sends the information back to the utility; and c) proposed for the future, a power transmitter to measure the energy use of individual appliances (e.g. washing machines, clothes dryers, dishwasher, etc) and send information via wireless radio frequency signal back to the SmartMeter. The primary rationale for SmartMeters and grid networks is to more accurately monitor and direct energy usage.

The public health issue of concern in regard to SmartMeters is the involuntary exposure of individuals and households to electromagnetic field (EMF) radiation. EMFs are everywhere, coming from both natural and man-made sources. The three broad classes of EMF are:

- extremely low frequency, ELF (from the sun or powerlines)
- radio frequency, RF (from communication devices, wireless devices, and SmartMeters)
- extremely high frequency, known as ionizing radiation (x-rays and gamma rays)

Much of this exposure is beyond our control and is a matter of personal choice; however, public exposure to RF fields is growing exponentially due to the proliferation of cell phones, and wireless fidelity (Wi-Fi) technology. To understand the relationship between EMF from SmartMeters and other sources, it is helpful to view the electromagnetic spectrum:

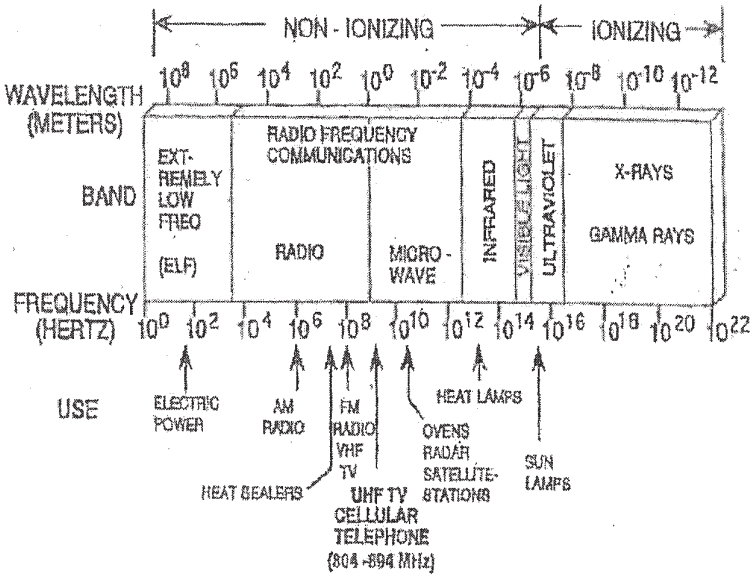

Fig. 1: The electromagnetic spectrum, showing the relation s between ELF and RF fields, wavelength and frequency, and the ionizing and non-ionizing portions of the spectrum.

The Federal Communications Commission (FCC) has adopted limits for Maximum Permissable Exposure (MPE) that are based on exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP). The limits vary with

the frequency of the electromagnetic radiation and are expressed in units of microwatts per centimeter squared. A SmartMeter contains two antennas whose combined time-averaged public safety limit of exposure is 655μW/cm² (Sage, 2011). According to the California Council on Science and Technology (CCST) Report (2011), within distances of three to ten feet, SmartMeters would not exceed this limit. However, CCST did not account for the frequency of transmissions, reflection factors, banks of SmartMeters firing simultaneously, and distances closer than three feet. There are numerous situations in which the distance between the SmartMeters and humans is less than three feet on an ongoing basis, e.g. a SmartMeter mounted on the external wall to a bedroom with the bed placed adjacent to that mounting next to the internal wall. That distance is estimated to be one foot. The CCST Report also states that SmartMeters will generally transmit data once every four hours, and once the grid is fully functional, may transmit "more frequently." It has been aptly demonstrated by computer modeling and real measurement of existing meters that SmartMeters emit frequencies almost continuously, day and night, seven days a week. Furthermore, it is not possible to program them to not operate at 100% of a duty cycle (continuously) and therefore it should not be possible to state that SmartMeters do not exceed the time-averaged exposure limit. Additionally, exposure is additive and consumers may have already increased their exposures to radiofrequency radiation in the home through the voluntary use of wireless devices such as cell and cordless phones, personal digital assistants (PDAs), routers for internet access, home security systems, wireless baby surveillance (baby monitors) and other emerging devices. It would be impossible to know how close a consumer might be to their limit, making safety a uncertainty with the installation of a mandatory SmartMeter.

This report will focus on the documented health risks of EMF in general, the relevance of that data to SmartMeters exposure, the established guidelines for RF safety to the public at large, and then provide recommendations to ameliorate the risk to the public's health.

Evidence-based Health Risks of EMFs

There is no scientific literature on the health risks of SmartMeters in particular as they are a new technology. However, there is a large body of research on the health risks of EMFs. Much of the data is concentrated on cell phone usage and as SmartMeters occupy the same energy spectrum as cell phones and depending on conditions, can exceed the whole body radiation exposure of cell phones phones (see Attachment B1, Figure 4). In terms of health risks, the causal factor under study is RF radiation whether it be from cell phones, Wi-Fi routers, cordless phones, or SmartMeters. Therefore all available, peer-reviewed, scientific research data can be extrapolated to apply to SmartMeters, taking into consideration the magnitude and the intensity of the exposure.

Since the mid-1990's the use of cellular and wireless devices has increased exponentially exposing the public to massively increased levels of RF. There is however, debate regarding the health risks posed to the public given these increased levels of radiation. It must be noted that there is little basic science funding for this type of research and it is largely funded by industry. An intriguing divide, noted by Genuis, 2011 is that most

research carried out by independent non-government or non-industry affiliated researchers suggests potentially serious effects from many non-ionizing radiation exposures; most research carried out by independent non-government or non-industry affiliated researchers suggests potentially serious effects from many non-ionizing radiation exposures research funded by industry and some governments seems to cast doubt on the potential for harm. Elements of the controversy stem from inability to replicate findings consistently in laboratory animal studies. However, analysis of many of the conflicting studies is not valid as the methodology used is not comparable. Despite this controversy, evidence is accumulating on the results of exposure to RF at non-thermal levels including increased permeability of the blood-brain barrier in the head (Eberhardt, 2008), harmful effects on sperm, double strand breaks in DNA which could lead to cancer genesis (Phillips, 2011), stress gene activation indicating an exposure to a toxin (Blank, 2011), and alterations in brain glucose metabolism (Volkow, 2011).

In terms of meta-analyzed epidemiological studies, all case–control epidemiological studies covering >10 years of cell phone use have reported an increased risk of brain tumors from the use of mobile phones (Hallberg, 2011). Other studies have pointed to an increasing risk of acoustic neuroma, salivary gland tumors, and eye cancer after several years of cell phone use and the tumors occur predominantly on the same side of the head as the phone is used. The analysis of brain cancer statistics since the mid 20th century in several countries reveals that brain tumor formation has a long latency time, an average of over 30 years to develop from initial damage.(Hallberg, 2011). Therefore using studies such as the Interphone Study which looked as shorter latency periods for the development of specific brain cancers will result in inconclusive data.

Another potential health risk related to EMF exposure, whose legitimacy as a phenomen remains contentious, is electromagnetic hypersensitivity (EHS). In the 1950's, various centers in Eastern Europe began to describe and treat thousands of workers, generally employed in jobs involving microwave transmission. The afflicted individuals often presented with symptoms such as headaches, weakness, sleep disturbance, emotional instability, dizziness, memory impairment, fatigue, and heart palpitations. Clinical research to verify the physiological nature of this condition did not begin in earnest until the 1990's and found that the EMF involved was usually within the non-ionizing range of the electromagnetic spectrum. In the early 2000's, estimates of the occurrence of EHS began to swell with studies estimating the prevalence of this condition to be about 1.5% of the population of Sweden (Hilleert et al., 2002), 3.2% in California (Levallios et al., 2002), and 8% in Germany (infas Institut fur angewandte Sozialwissenschaft GmbH, 2003).

In 2004, WHO declared EHS "a phenomenon where individuals experience adverse health effect while using or being in the vicinity of devices emanating electric, magnetic, or electromagnetic fields (EMFs)...Whatever its cause, EHS is a real and sometimes debilitating problem for the affected persons (Mild et al., 2004)."

Currently, research has demonstrated objective evidence to support the EHS diagnosis, defining pathophysiological mechanisms including immune dysregulation in vitro, with

increased production of selected cytokines and disruption and dysregulation of catecholamine physiology (Genuis, 2011).

Until recently, the diagnosis of EHS has not received much support from the medical community due to lack of objective evidence. In an effort to determine the legitimacy of EHS as a neurological disorder, however, a collection of scientists and physicians recently conducted a double-blinded research study that concluded that "EMF hypersensitivity can occur as a bona fide environmentally-inducible neurological syndrome (McCarty et al., 2011).

Safety Guidelines

The guidelines currently used by the FCC were adopted in 1996, are thermally based, and are believed to protect against injury that may be caused by acute exposures that result in tissue heating or electric shock. FCC guidelines have a much lower certainty of safety than standards. Meeting the current FCC guidelines only assures that one should not have heat damage from SmartMeter exposure. It says nothing about safety from the risk of many chronic diseases that the public is most concerned about such as cancer, miscarriage, birth defects, semen quality, autoimmune diseases, etc. Therefore, when it comes to nonthermal effects of RF, FCC guidelines are irrelevant and cannot be used for any claims of SmartMeter safety unless heat damage is involved (Li, 2011).

There are no current, relevant public safety standards for pulsed RF involving chronic exposure of the public, nor of sensitive populations, nor of people with metal and medical implants that can be affected both by localized heating and by electromagnetic interference (EMI) for medical wireless implanted devices. Many other countries (9) have significantly lower RF/MW exposure standards ranging from 0.001 to 50 $\mu W/cm^2$ as compared with the US guideline of 200-1000 $\mu W/cm^2$. Note that these recommended levels are considerably lower that the approximately 600 $\mu W/cm^2$. (time-averaged) allowed for the RFR from SmartMeters operating in the low 900 MHz band mandated by the FCC based on only thermal consideration.

In summary, there is no scientific data to determine if there is a safe RF exposure level regarding its non-thermal effects. The question for governmental agencies is that given the uncertainty of safety, the evidence of existing and potential harm, should we err on the side of safety and take the precautionary avoidance measures? The two unique features of SmartMeter exposure are: 1) universal exposure thus far because of mandatory installation ensuring that virtually every household is exposed; 2) involuntary exposure whether one has a SmartMeter on their home or not due to the already ubiquitous saturation of installation in Santa Cruz County. Governmental agencies for protecting public health and safety should be much more vigilant towards involuntary environmental exposures because governmental agencies are the only defense against such involuntary exposure. Examples of actions that the public might take to limit exposure to electromagnetic radiation can be found in Attachment B2.

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Figure 4 from Hirsch; 2011

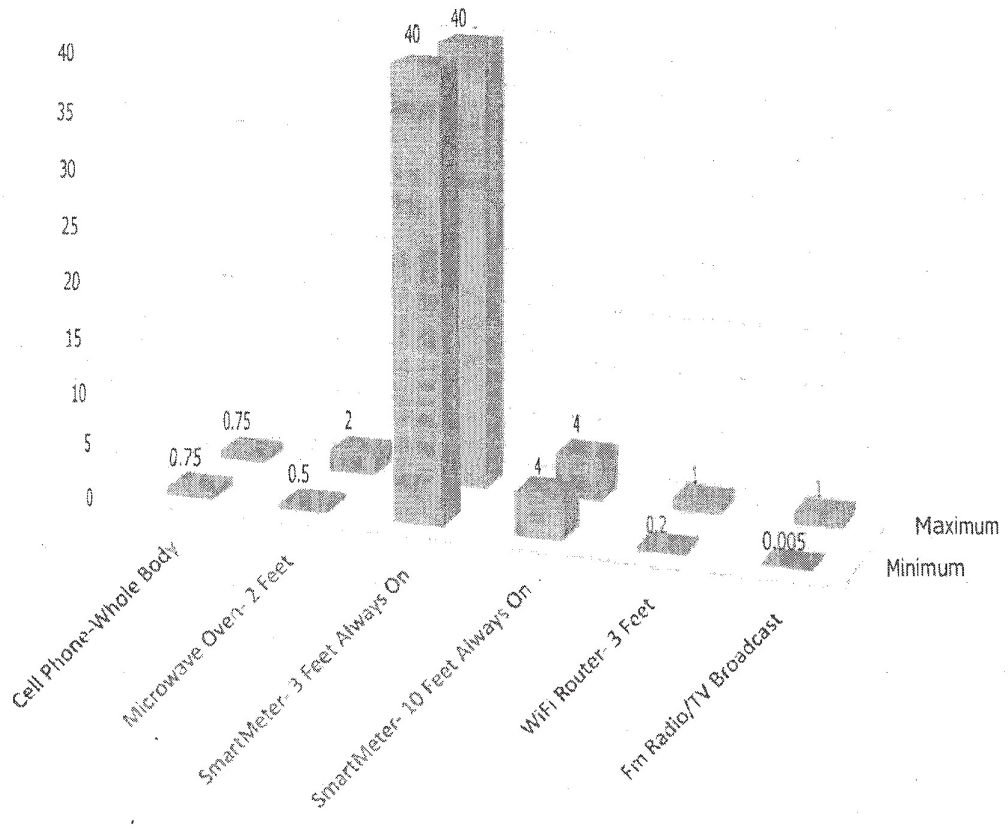

Figure 4. Comparison of Radio-Frequency Levels to the Whole Body from Various Sources in μ W/cm^2 over time [corrected for assumed duty cycle and whole body exposure extrapolated fro m EPRI/CCST SmartMeter estimated levels at 3 feet].

January 9, 2012

To the California Public Utilities Commission Re:
PG&E SmartMeter Opt-out Application, A.11-03-014

We the undersigned elected officials urge the Commission to delay consideration of President Peevey's preliminary decision until further public hearing and input are completed. The decision, which calls for charging fees to customers who elect to opt out of the SmartMeter program, conflicts with local planning authority, does not protect the health or safety of all residents and imposes a prejudicial financial burden on ratepayers who chose to opt out of the program. We therefore urge the Commission to continue consideration of this matter until further public hearings are completed to ensure the due process rights of all stakeholders.

The order does not provide an empirical basis for the amount of the fees to be charged to opt out customers nor does it consider the net financial impact of PG&E's latest proposal to permit customer retention of analogue meters. Hence the order effectively eliminates a full and fair hearing process for these contested issues of fact to be considered and resolved.

Historically, telecommunications carriers throughout this state have complied with local planning codes which provide notice to residents as to the construction of transmission facilities. Pacific Gas and Electric Company ignored such codes in the deployment of the Smart Meter telecommunications network. Currently many of our jurisdictions have passed ordinances which impose a moratorium on wireless SmartMeters and have petitioned to opt out on a jurisdictional basis. The current order is silent on these issues and effectively discards them without consideration.

The decision also ignores the longstanding controversy and concern about the health impacts associated with electro-magnetic fields. A 1998 California Department of Health Services study commissioned by the California Public Utility Commission itself found that 3.2% of Californians reported hypersensitivity to electro-magnetic fields. A May 2011 study released by the World Health Organization/International Agency for Research on Cancer reclassified RF radiation of the type emitted by wireless equipment throughout the Smart Meter system as "possibly carcinogenic" to humans. President Peevey's order effectively imposes a different rate on many utility customers who need to avoid exposure in violation of California Public Utilities Code section 453(b) which states in pertinent part that "No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation..."

President Peevey's decision does not address these concerns nor does it the financial viability of wired equipment alternatives. In so doing, it eliminates a much anticipated public hearing process.

For all of the foregoing reasons, we respectfully urge the Commission to continue Petition A.11-03-014 matter for further hearings.

Signature	Marin County Jurisdiction
Signature	Marin County Jurisdiction
Signature	Marin County Jurisdiction

Signature

Marin County

Jurisdiction

Signature

Marin County

Jurisdiction

Petition to the California Public Utilities Commission Re: PG&E SmartMeter Opt-out Application, A.11-03-014

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For all of the foregoing reasons, we respectfully urge the Commission to continue Petition A.11-03-014 matter for further hearings.

Signature	Chair, Board of Supervisors County of Santa Cruz Jurisdiction
Signature	Jurisdiction
Signature	Jurisdiction
Signature	Jurisdiction
Signature	Jurisdiction
Signature	Jurisdiction

Petition to the California Public Utilities Commission Re: PG&E SmartMeter Opt-out Application, A.11-03-014

The Lake County Board of Supervisors urges the Commission to delay consideration of President Peevey's preliminary decision until further public hearing and input are completed. The decision, which calls for charging fees to customers who elect to opt out of the SmartMeter program, conflicts with local planning authority, does not protect the health or safety of all residents and imposes a prejudicial financial burden on ratepayers who chose to opt out of the program. We therefore urge the Commission to continue consideration of this matter until further public hearings are completed to ensure the due process rights of all stakeholders.

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President Peevey's decision does not address these concerns nor does it the financial viability of wired equipment alternatives. In so doing, it eliminates a much anticipated public hearing process.

For all of the foregoing reasons, this Board respectfully urges the Commission to continue Petition A.11-03-014 matter for further hearings.

Dated: January 10, 2012

Rob Brown

Rob Brown, Chair
Lake County Board of Supervisors, District 5

Jim Comstock
Lake County Board of Supervisors, District 1

Jeff Smith
Lake County Board of Supervisors, District 2

- ABSENT -

Denise Rushing
Lake County Board of Supervisors, District 3

Anthony Farrington
Lake County Board of Supervisors, District 4

Petition to the California Public Utilities Commission Re: PG&E SmartMeter Opt-out Application, A.11-03-014

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Signature	Fairfax Jurisdiction
vice-mayor Signature	Fairfax Jurisdiction

Signature	Jurisdiction
Mayor	Town of Fairfax
	Fairfax
	FAIRFAX

Petition to the California Public Utilities Commission Re: PG&E SmartMeter Opt-out Application, A.11-03-014

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Signature	Jurisdiction
Signature	Jurisdiction

Signature	TOWN OF ROSS Jurisdiction
Signature	Jurisdiction
Signature	Town of Ross Jurisdiction
Signature	TOWN OF ROSS Jurisdiction
Signature	Jurisdiction
Signature	Jurisdiction
Signature	Jurisdiction
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Petition to the California Public Utilities Commission Re: PG&E SmartMeter Opt-out Application, A.11-03-014

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Signature

Jurisdiction

Signature

Jurisdiction

Ford Greene.
Member, San Anselmo Town Council

Signature

Jurisdiction

Signature

Jurisdiction

Signature

Jurisdiction

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Jurisdiction

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Jurisdiction

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Jeff Kroot
Signature

San Anselmo
Jurisdiction

Signature	Jurisdiction
LORIJ LOPIN	SAN ANSELMO
Kathryn P. Coleman	SAN ANSELMO
S D Bonell	Belvedere