Decision **PROPOSED DECISION OF ALJ SULLIVAN** (Mailed 11/15/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Increase Revenue Requirements to Recover the Costs to Upgrade its SmartMeter™ Program (U39E).	Application 07-12-009 (Filed December 12, 2007)

DECISION DENYING THE CITY AND COUNTY OF SAN FRANCISCO'S PETITION TO MODIFY DECISION 09-03-026

1. Summary

We deny the City and County of San Francisco's petition to modify Decision 09-03-026 because the petition fails to present new facts that justify the request to suspend Pacific Gas and Electric Company's (PG&E) program to install SmartMeters. In particular, there are no facts that show that the SmartMeters are less accurate than current meters or that the billing system is now generating fewer accurate bills.

In addition, other issues that subsequently arose in this proceeding concerning customers' complaints and potential installation costs that exceed the amount authorized have had, have, or will likely have procedural homes elsewhere. Some issues are under consideration in PG&E's General Rate Case, Application 09-12-020. For example, the pending settlement in PG&E's General Rate Case provides that Commission staff will oversee an independent audit of SmartMeter costs. Other issues concerning projected SmartMeter costs are also the subject of this pending settlement agreement, filed on October 15,

2010, which provides for SmartMeter cost recovery and benefit recognition for the 2011 through 2013 period. Although the Commission has not yet acted on this settlement, it is clear that many issues concerning customer complaints and installation costs already have a procedural home. Moreover, general rate cases, a key part of Commission oversight of PG&E, can address issues concerning customer service and installation costs arising from the SmartMeter installation program. Issues concerning EMF emissions from SmartMeters have been the subject of Application 10-04-018. We see no reason to continue this proceeding.

In summary, we deny the petition to suspend PG&E's SmartMeter installation program because the parties have not put forth facts that justify the requested action. Since issues concerning customer service and installation costs have had, have, and will likely have other procedural homes, there is no good reason to continue this proceeding. Therefore, we deny the petition and close this proceeding.

2. Background and Central Issues

On June 17, 2010, the City and County of San Francisco's (CCSF) petition to modify Decision (D.) 09-03-026 reopened this proceeding.[1] CCSF sought "an immediate suspension of PG&E's further installation of SmartMeters until the Commission concludes its investigation into the significant problems created by

[1] *City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* (Petition).

PG&E's deployment of its SmartMeters."[2] CCSF also filed a motion for expedited treatment of its Petition.[3]

The Commission acted at its November 20, 2009 business meeting to initiate independent testing of PG&E's SmartMeters and related software due to public concerns raised about PG&E's deployment of SmartMeters.[4] This independent study concluded, and on September 2, 2010, President Peevey issued an Assigned Commissioner's Ruling transmitting as an attachment the Commission-sponsored report titled "PG&E Advanced Metering Assessment Report" (Structure Report)[5] to the service list in this proceeding.

On September 22, 2010, the Administrative Law Judge (ALJ) issued a ruling[6] that denied CCSF's Motion for expedited treatment of the petition. The ALJ Ruling held that:

> … the information available at this time indicates that the costs associated with a suspension of PG&E's Smart Meter installation program, in both monetary and human terms, appear to be substantial and exceed the doubtful benefits of an immediate suspension.[7]

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[2] Petition at 1.

[3] *Motion for Expedited Treatment of the City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Deployment of SmartMeters* (Motion).

[4] *Assigned Commissioner's Ruling Regarding the Consultant's Evaluation of PG&E's SmartMeter Program* (ACR), September 2, 2010, at 1.

[5] *Id.* at Attachment.

[6] *Administrative Law Judge's Ruling* (ALJ Ruling), September 22, 2010.

[7] ALJ Ruling at 8.

The ALJ Ruling also quoted directly from the Structure Report, which found that:

> PG&E's SmartMeters are accurately recording electric usage within acceptable CPUC [California Public Utilities Commission] tolerances, and are being accurately utilized in Customer billing.[8]

The ALJ Ruling invited comments and replies on the question, "What should the Commission do concerning the CCSF Petition in light of the Structure Report?"[9]

This is now a central question in this proceeding. On this question, CCSF, the Commission's Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) advocate a continuation of this proceeding to review the Structure Report and the reasonableness of PG&E's implementation of the SmartMeter Program. PG&E and The Technology Network (TechNet), on the other hand, argue for a denial of the Petition.

2.1. Procedural Background

The procedural history following the filing of the Petition is lengthy and demonstrates how events and developments have altered the shape of the issues before the Commission.

On June 17, 2010 the Commission received CCSF's Petition, which called for a temporary suspension of the SmartMeter installation program. In addition, CCSF also filed a Motion requesting expedited treatment of its Petition.

PG&E,[10] DRA,[11] TURN,[12] the County of Santa Cruz,[13] the City of Santa Cruz,[14] and the Coalition of California Utility Employees (CUE)[15] filed timely

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[8] Structure Report at 13, cited in ALJ Ruling at 7.

[9] ALJ Ruling at 8.

responses to the Petition. In addition, the Town of Fairfax timely filed a motion to intervene in support of CCSF.[16]

On July 23, 2010, filing late with the assent of the ALJ, the City of Capitola adopted all the arguments of CCSF in its Petition and Motion.[17]

On July 29, 2010, with the assent of the ALJ, CCSF filed a reply.[18]

On July 30, PG&E filed a response opposing the motion of the Town of Fairfax to intervene.[19]

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[10] *Pacific Gas and Electric Company's Opposition to the City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* (PG&E Opposition), July 19, 2010.

[11] *Response of the Division of Ratepayer Advocates to the City and County of San Francisco's Petition to Modify Decision 09-03-026 to 026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* (DRA Response), July 19, 2010.

[12] *Response of The Utility Reform Network in Support of the CCSF Petition to Modify D.09-03-026 to Temporarily Suspend SmartMeter Installation*, June 28, 2010.

[13] County of Santa Cruz's *Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition,* June 24, 2010.

[14] City of Santa Cruz's *Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition,* July 14, 2010.

[15] *The Coalition of California Utility Employee's Opposition to the City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters*, July 19, 2010.

[16] *Motion of the Town of Fairfax to Intervene in the Proceeding in Support of the City and County of San Francisco's Petition to Modify Decision 09-03-026* (Fairfax Response).

[17] City of Capitola's *Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition,* July 23, 2010.

[18] *Reply of the City and County of San Francisco to Responses to the Petition to Temporarily Suspend PG&E's Installation of SmartMeters*, July 29, 2010

On July 30, 2010, filing late with the assent of the ALJ, the City of Monte Sereno[20] and the City of Scotts Valley[21] adopted all the arguments of CCSF in its Petition and Motion.

On August 6, 2010, an ALJ Ruling set a Prehearing Conference (PHC) for August 18, 2010 and granted the Town of Fairfax party status.[22]

On August 16, 2010, filing late with the assent of the ALJ, the City of Watsonville[23] adopted all the arguments of CCSF in its Petition and Motion.

In summary, as of August 18, 2010, CCSF, the Town of Fairfax, the County of Santa Cruz, the City of Santa Cruz, the City of Capitola, the City of Monte Sereno and the City of Scotts Valley presented a unified call for a suspension of the SmartMeter installation program. TURN also supported the Petition of CCSF. PG&E and CUE opposed the Petition. DRA expressed concern for the costs of either suspending or continuing with SmartMeter installation, and asked that the Commission, as it considered this matter, adopt a policy to minimize costs.[24]

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[19] *Pacific Gas and Electric Company's (U 39 M) Response to the Motion of the Town of Fairfax to Intervene in Support of City and County of San Francisco's Petition to Modify Decision 09-03-026*, July 30, 2010.

[20] City of Monte Sereno's *Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition,* July 30, 2010.

[21] City of Scotts Valley's *Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition,* July 30, 2010.

[22] *Administrative Law Judge's Ruling Setting Prehearing Conference,* August 6, 2010.

[23] City of Watsonville's *Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition,* August 16, 2010.

[24] DRA Response at 1.

At the PHC, the ALJ stated that there were two issues before the Commission: 1) what to do regarding CCSF's request to suspend the installation of PG&E's SmartMeters immediately; and 2) how to proceed with the other issues raised in the Petition. During the course of the PHC, the ALJ ruled that PG&E must file information supporting its claim that the suspension would be costly, and set a date of August 25, 2010 for receipt of that information.[25] The ALJ further ruled that parties could respond to this filing no later than August 27, 2010.[26]

PG&E filed the information ordered on August 25, 2010.[27]

On August 27, CCSF,[28] CUE,[29] DRA[30] and TechNet[31] filed comments in response to the PG&E Cost Filing.

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[25] TR 24:15-16.

[26] TR 24:24-25.

[27] *Pacific Gas and Electric Company's Response in Compliance with Administrative Law Judge's Oral Ruling Requiring that PG&E Submit Data on the Estimated Potential Costs Associated with Suspension of Pacific Gas and Electric Company's SmartMeter Technology Deployment,* August 25, 2010 (PG&E Cost Filing); Declaration of Stephen P. Lechner Address Costs and other Impacts Related to a Moratorium on PG&E's SmartMeter Program, August 25, 2010; and *Pacific Gas and Electric Company's Motion to File Under Seal the "Confidential Version" of Data on Estimated, Potential Costs Associated with Suspension of Pacific Gas and Electric Company's SmartMeter Technology Deployment,* August 25, 2010. An ALJ Ruling on September 22, 2010 placed the cost data under seal.

[28] *Response of the City and County of San Francisco to Pacific Gas and Electric Company's Submission of Data on the Estimated Costs Associated with Suspension of SmartMeter Technology Deployment*, August 27, 2010.

[29] *The Coalition of California Utility Employees' Comments on Pacific Gas and Electric Company's Data on the Estimated Potential Costs Associated with Suspension of Pacific Gas and Electric Company's SmartMeter Technology Deployment*, August 27, 2010.

[30] *Comments of the Division of Ratepayer Advocates on the Data Provided by PG&E's Data on the Costs of a Temporary Suspension*, August 27, 2010.

On September 2, 2010, President Peevey issued the ACR transmitting as an attachment the Commission-sponsored report titled "PG&E Advanced Metering Assessment Report" (Structure Report).

Since the Petition had asked for a temporary suspension of meter installation until the completion of this study, the completion of the study and its release dramatically altered the shape of the issues before the Commission. On September 22, 2010, the ALJ Ruling denied the motion for expedited action and invited comments and replies on the question, "What should the Commission do concerning the CCSF Petition in light of the Structure Report?"[32]

On October 15, 2010, CCSF,[33] DRA,[34] PG&E,[35] TechNet[36] and TURN[37] filed opening comments.

On October 29, 2010, DRA[38] and PG&E[39] filed replies.

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[31] *Comments of the Technology Network on the Potential Costs Associated with a Temporary Suspension*, August 27, 2010.

[32] ALJ Ruling at 8.

[33] *Response of the City and County of San Francisco to the Administrative Law Judge's Ruling of September 22, 2010 Ruling* (CCSF Comments on ALJ Ruling), October 15, 2010.

[34] *Comments of the Division of Ratepayer Advocates on What the Commission Should Do in Light of the Structure Group Report* (DRA Comments on ALJ Ruling), October 15, 2010.

[35] *Opening Comments of Pacific Gas and Electric Company in Response to Administrative Law Judge's Ruling* (PG&E Comments on ALJ Ruling), October 15, 2010.

[36] *Comments of the Technology Network* (TechNet Comments on ALJ Ruling), October 15, 2010.

[37] *Comments of the Utility Reform Network in Response to ALJ Ruling of 9/22/20* [sic] (TURN Comments on ALJ Ruling), October 15, 2010.

[38] *Reply Comments of the Division of Ratepayer Advocates on What the Commission Should Do in Light of the Structure Report* (DRA Reply Comments on ALJ Ruling), October 29, 2010.

2.2. Jurisdiction

The Commission's jurisdiction over this matter is set out in the Pub. Util. Code:

> 1708. The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

The procedures whereby the parties may petition the Commission to modify decisions are set out in the Commission's Rules of Practice and Procedure. The rule most relevant to this proceeding is Rule 16.4(b):

> Rule 16.4 (b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.[40]

In summary, the Commission has clear statutory authority and rules to address this matter.

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[39] *Reply Comments of Pacific Gas and Electric Company in Response to Parties' Opening Comments Submitted Pursuant to Administrative Law Judge's Ruling Issued September 22, 2010* (PG&E Reply Comments on ALJ Ruling), October 29, 2010.

[40] State of California, Public Utilities Commission, *Rules of Practice and Procedure*, August 2009, Rule 16.4 available at http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138-15.htm#P790_188519

3. Issue Before the Commission: Investigate Structure Report or Deny Petition and Close Proceeding?

The threshold issue in this proceeding is whether the Commission should continue this proceeding to review the Structure Report and investigate PG&E's SmartMeter program or deny the Petition and close this proceeding.

4. Position of Parties

The CCSF Comments on the ALJ Ruling note that the release of the Structure Report makes the "step of temporarily suspending SmartMeter installations until the Commission completed its investigations into SmartMeters"[41] a "specific relief"[42] that is "no longer available."[43] CCSF then argues that the "Commission should now use this proceeding to review the Structure Group Report."[44] Specifically, CCSF argues that "The Commission cannot reasonably rely on findings in the report unless it reviews the report"[45] and further contends that the "Commission does not typically accept the findings presented in a report by any party …"[46] CCSF then cites a series of examples in which the Commission solicited public input before accepting the results of a study.

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[41] CCSF Comments on ALJ Ruling at 1.

[42] *Id*. at 2.

[43] *Id*.

[44] *Id.*

[45] *Id.*

[46] *Id.*

In addition, CCSF expresses support for the position that "the Commission must closely examine whether or not PG&E's SmartMeter deployment costs are reasonable in light of PG&E's history of problems."[47]

DRA recommends that the Commission continue its review of PG&E's SmartMeter program and recommends that the Commission take four steps to complete its investigation:

1. Examine the Structure Report,[48]
2. Determine whether known problems have been addressed satisfactorily,[49]
3. Determine whether there are any additional problems or concerns that need to be addressed,[50] and
4. Issue a decision setting forth the Commission's findings, and what, if any, further action needs to be taken to ensure that the SmartMeter program delivers the benefits promised, and does not harm customers.[51]

DRA further argues:

> Some months ago, the Commission announced it would engage an independent consultant to investigate the reasons for the extraordinary number of customer complaints it has received concerning PG&E's SmartMeter program. Now that the Report has been made available, the Commission must evaluate it (in a public proceeding, with participation of interested parties), decide whether to adopt the Report's findings, and obtain any additional information that may be required to answer all questions pertinent to the Commission's investigation. The Commission

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[47] *Id.* at 5.

[48] DRA Comments on ALJ Ruling at 2.

[49] *Id.* at 3.

[50] *Id.* at 4.

[51] *Id.*

> should then issue a decision setting forth its findings and conclusions, and ordering any further action it deems necessary.[52]

TURN also supports the continuation of this proceeding. TURN argues:

> The Commission should allow parties time to review the Structure Report, obtain any data used by Structure in doing its evaluation, and (if necessary) provide testimony concerning any analytical weaknesses or problems with the Report. TURN suggests that a prehearing conference be held to ascertain the intent of any party to conduct such analysis and determine a proper procedural schedule.[53]

PG&E, in contrast, argues that the Commission should deny CCSF's Petition because "the Structure Report expressly refutes the allegations of flawed technology that formed the basis of CCSF's Petition."[54] PG&E further asserts that CCSF's argument that the Commission does not ordinarily accept findings in a submitted report "is misplaced."[55] PG&E states that the "unique circumstances around the Structure Report distinguish it from the examples that CCSF cites as precedent …"[56] PG&E contends that opening a review of the Structure Report and continuing this proceeding "is beyond the relief requested in CCSF's Petition …"[57] Finally, PG&E concludes by arguing that "neither CCSF nor any other parties submitting comments have satisfied the standard required for the Commission to grant CCSF's petition to modify."[58] PG&E contends that "neither

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[52] *Id.* at 4-5.

[53] TURN Comments on ALJ Ruling.

[54] PG&E Comments on ALJ Ruling at 4.

[55] PG&E Reply Comments on ALJ Ruling at 3.

[56] *Id.* at 3.

[57] *Id.* at 4.

[58] *Id.* at 4.

CCSF nor any other party has identified material new facts that would support suspension of deployment."[59]

Like PG&E, TechNet continues to oppose the Petition. TechNet argues that the "Structure Report repudiates the CCSF Petition's core premise concerning the accuracy of PG&E's SmartMeters."[60] TechNet argues further that "suspending the deployment of SmartMeters would not serve any valid purpose."[61] TechNet argues further that:

> … the Commission should remove the threat of a suspension and thereby free up PG&E's employees, the employees of PG&E's SmartMeter vendors, Commission staff members, and well-intentioned consumer advocates to focus on what they do best, namely identifying and resolving any real but resolvable issues that may arise in connection with this technologically innovative and logistically challenging infrastructure upgrade project.[62]

In summary, CCSF, DRA and TURN argue for this proceeding to continue with a review of the Structure Report, while PG&E and TechNet oppose CCSF's Petition.

5. Discussion and Analysis

We deny CCSF's Petition and close this proceeding because neither CCSF nor any other party has identified material new facts that justify suspension of the SmartMeter program, and because other issues concerning customer service

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[59] *Id.* at 5.

[60] TechNet Comments on ALJ Ruling at 2.

[61] *Id.*

[62] *Id.* at 3-4.

and program costs included in the subsequent filings of parties to this proceeding have had, have, or will likely have other procedural homes.

On the central issue before us, the Petition offers no facts concerning the inaccuracy of the SmartMeters or PG&E's billing system that warrant the modification of D.09-03-026.[63] PG&E, summarizing the data in the very same reports cited by the Petition, shows that the problems do not warrant the suspension of the installation program and that the new meters are functioning better than older meters.[64] More specifically, PG&E's analysis of the data in the reports cited by CCSF, shows that the SmartMeters were more accurate, led to fewer estimated bills, and produced more timely bills than traditional meters.[65] Moreover, even the data cited by CCSF – that there are "hundred's of complaints" in a program that has installed "5.8 million meters"[66]– would suggest a complaint rate of less than 0.02%.[67]

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[63] We note that the Structure Report has examined the issues of meter and billing system accuracy and found that both are accurate. We do not, however, need to take this report into evidence or rely on it because in a petition to modify, it is the petitioner who must provide the new facts that justify granting the petition. As noted above, there are no facts before us that warrant suspension of the SmartMeter program.

[64] PG&E Opposition at 4.

[65] PG&E Opposition at 4 shows that of 17,340 Smart Meters tested during the period covered by reports, only 10 meters were inaccurate but of 28, 033 non-SmartMeters tested, 320 meters were inaccurate; of 3,984, 346 bills produced in the prior month using Smart Meters, only .08% were estimated but of 4,990,425 produced with non-SmartMeters, 1.01% were estimated; 99.88% of SmartMeter bills were on time, but only - 99.7% of non-SmartMeter bills.

[66] Petition at 1.

[67] This rough calculation uses that fact that there were 5.8 million meters installed and, based on the assertion that there "hundreds" (not thousands) of complaints, assumes

Footnote continued on next page

Concerning other issues relating to installation costs and customer service mentioned by CCSF, PG&E's General Rate Cases, which occur on a regular schedule, already offer a procedural home in which the Commission can consider the issues concerning the costs and customer service issues that CCSF, DRA, and TURN would now have us address in this proceeding. In particular, D.09-03-026, the decision that the Petition asks us to modify, states in Ordering Paragraph 6:

> 6. In its next general rate case (GRC) for test year 2011, PG&E shall make an affirmative showing that it has avoided double recovery of any authorized SmartMeter Upgrade costs, and that any requested costs in its 2011 GRC are consistent with the limits of recovery adopted in this decision.[68]

Consistent with this directive, some SmartMeter issues relating to costs are being addressed in PG&E's test year 2011 General Rate Case, Application (A.) 09-12-020, which is nearing conclusion. A pending settlement agreement, filed on October 15, 2010, proposes that Commission staff oversee an independent audit of SmartMeter costs. The pending settlement agreement also addresses SmartMeter cost recovery and benefit recognition for the 2011 through 2013 period.

Thus, cost issues associated with the SmartMeter program already have had a procedural home and are the subject of a pending settlement now under consideration in A.09-12-020. In addition, issues concerning customer service always constitute a part of a GRC, and these occur on a regular schedule.

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there are fewer than 1000 complaints. Moreover, if there are less than 5,800 complaints, the rate would be less than 0.1%.

[68] D.09-03-026, Ordering Paragraph 6 at 196.

Furthermore, we note that other issues concerning SmartMeters are also before the Commission. A.10-04-018 has recently addressed issues concern EMF arising from SmartMeter operation. Rulemaking 08-12-009, concerning the Smart Grid, is addressing many issues concerning customer privacy and access to energy usage data produced by SmartMeters. Thus, we see no reason to continue this proceeding.

6. Conclusion

In summary, CCSF has not provided new facts that would warrant the suspension of PG&E's SmartMeter program. Issues concerning service quality and program costs already have had, currently have, or will likely have procedural homes. This proceeding should be closed.

7. Comments on Proposed Decision

The proposed decision (PD) of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 6, 2010 by CCSF, DRA, PG&E and TURN and reply comments were filed on December 13, 2010 by PG&E.

7.1. Arguments on PD

In comments on the PD, CCSF, DRA, and TURN call for substantial modifications, while PG&E supports most aspects of the PD.

CCSF argues that the PD should be modified to "find that the City supported its Petition with sufficient new facts to justify a temporary suspension of PG&E's SmartMeter installation," find "that the Petition conforms to Rule 16.4" and that the Commission should "continue to hold this proceeding open to allow parties to comment on the findings contained in the Structure

Report and concerns over RF emissions."[69] Specifically, CCSF argues that the PD has adopted an "overly technical and unprecedented reading of Rule 16.4."[70]

DRA similarly argues that "the large volume of customer complaints about SmartMeters cited by petitioners, and the Commission's own decision to have those complaints evaluated by an outside consultant, are significant new circumstances …"[71] DRA concludes that "[i]t could not be clearer that there are material new facts."[72]

DRA also argues for a full investigation of the Structure Report in this proceeding. DRA takes objections to several of the findings of the Structure Report and to a September 2 "press release" that announced that "associated software and billing systems are consistent with industry standards and are performing accurately."[73] DRA notes that its October 29, 2010 reply comments "question whether that broad conclusion is supported by the evidence…"[74] DRA further states that it "has continued its preliminary review of the Report, and in doing so has discovered other anomalies and limitations…[75]

Finally, DRA contends that "most issues raised by SmartMeter complaints and by the Report's conclusions are beyond the scope of the GRC."[76]

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[69] CCSF Opening Comments at 1.

[70] *Id.* at 2.

[71] DRA Opening Comments at 2.

[72] *Id.*

[73] *Id.* at 4.

[74] *Id.*

[75] *Id.* at 5.

[76] *Id.* at 2.

TURN also argues for a consideration of the Structure Report in this proceeding. TURN argues that the Structure Report shows that "there are errors associated with PG&E's AMI system."[77] TURN then proceeds to identify a number of issues mentioned in the Structure Report that it wishes the Commission to explore in this proceeding.

Finally, like DRA, TURN argues that "[t]he rate case is almost over." TURN states that it supports the settlement agreement filed in the current rate case, but states that:

> … it does not appear that the issue of potential additional costs due to PG&E's need to respond to voluminous customer complaints, exacerbated by PG&E's original lack of response, was addressed in the rate case. Those are costs that might presumably be addressed in any future request for recovery of cost overruns of the AMI budget. The key, however, is proper accounting as separate from other customer care costs.[78]

PG&E, in contrast to CCSF, DRA, and TURN, argues in support of the PD. Specifically, PG&E argues that:

> The PD appropriately denies CCSF's Petition because CCSF fails to attest to any material new facts that would justify a suspension of PG&E's SmartMeter™ Program… CCSF fails to cite to the record and fails to attest to any material new facts that would justify suspension of PG&E's SmartMeter™ Program.[79]

PG&E also supports its position with references to the Structure Report.

Concerning the 2011 GRC, PG&E argues that:

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[77] TURN Opening Comments at 3.

[78] *Id.* at 5-6.

[79] PG&E Opening Comments at 2.

> … the PD's references to the 2011 GRC as a forum where CCSF could have raised some of its SmartMeter™ cost concerns does not create an opportunity to re-litigate issues or, for that matter, to expand or reopen the scope of the current GRC or the pending settlement agreement.[80]

7.2. Discussion of Comments and Revisions

In this section, we respond to the comments on the PD and describe the changes that we have incorporated into this document.

We have eliminated the discussion of Rule 16.4 that was contained in the PD. We deny the Petition of CCSF because that the Petition fails to present allegations or alleged facts that would, if true, warrant the suspension of the SmartMeter installation program. Since the Commission is not denying the Petition on the technical ground that it fails to conform to Rule 16.4, the discussion of this technical matter is not material to our decision.

We make no other major changes to the PD. In particular, we find that the argument of CCSF, DRA, and TURN that the Commission should use this proceeding to review the Structure Group Report is unpersuasive. As noted previously, the facts alleged in the record of this proceeding, even if true, fail to warrant the suspension of the SmartMeter installation program. The PG&E reports cited by CCSF and the customer complaints reported in the media do not warrant the costly action of suspending the installation of a major infrastructure program that offers important conservation and demand response benefits.[81]

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[80] Id. at 4.

[81] See D.09-03-026 at 112 and 134, where the conservation and demand response benefits that flow from SmartMeters are discussed and quantified.

Thus, the Commission does not need the findings of the Structure Report to decide the matter before us.

As a general proposition, the Commission's requesting of a report does not trigger a proceeding. The Commission orders, sponsors, and receives many reports that do not become the subject of a Commission proceeding. An investigation of the Structure Report is not warranted in this proceeding nor necessary to its resolution.

Concerning our discussion of Commission proceedings for considering issues of costs and customer service, we have clarified that PG&E's GRC is just one of a set of periodic GRCs that assess customer service quality and the reasonableness of costs and rates. As TURN rightly notes, should PG&E seek rate changes to cover new costs arising in their program to install SmartMeters, that request would require Commission assent. For these reasons, we believe that issues of service quality and costs triggered by the SmartMeter program have, have had, and will continue to have, forums for consideration.

Concerning CCSF's request that the Commission now use this proceeding to investigate EMF from SmartMeters, we decline to alter the scope of this proceeding. Moreover, the Commission, in D.10-12-001 (December 2, 2010), found that EMF produced by SmartMeters is "far below the levels of many commonly used devices,"[82] that the radio components of SmartMeters "are licensed or certified by the FCC"[83] and that "it is not reasonable to re-open the

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[82] D.10-12-001, Finding of Fact 3, at 14.

[83] *Id.*, Finding of Fact 2.

Commission's review of Smart Meters for the purpose of considering the alleged health impacts of RF emission from Smart Meters."[84]

Finally, we reject PG&E's request to cite the Structure Report as a basis for denying the Petition. As we have stated above, we have before us no facts that warrant the suspension of the SmartMeter program and do not rely on the results of the Structure Report in reaching our conclusion. We decline to incorporate this study into the record of this proceeding.

8. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Timothy Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. *The City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* (Petition) provides no new facts to support its request for suspension of the SmartMeter installation program.

2. PG&E's General Rate Case, A.09-12-020, is addressing aspects of PG&E's SmartMeter Program.

3. General Rate Cases typically address customer service issues.

Conclusions of Law

1. The Petition should be denied since no new facts justify modification of D.09-03-026.

2. D.09-03-026 deferred some issues associated with PG&E's SmartMeter installation program to PG&E's General Rate Case.

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[84] *Id.*, Conclusion of Law 1, at 15.

3. General rate cases are a common forum for determining the reasonableness of electric rates and for reviewing the quality of customer service.

O R D E R

IT IS ORDERED that:

1. *The City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* is denied.
2. Application 07-12-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.