

Decision 12-02-016

February 1, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Heather Epps for
Modification of D.06-07-027 and
D.09-03-026.

Application 10-09-015
(Filed September 17, 2010)

**ORDER DENYING REHEARING
OF DECISION (D.) 11-05-027**

I. INTRODUCTION

In Decision (D.) 11-05-027 (or “Decision”), we dismissed the application of Heather Epps for modification of D.06-07-027 and D.09-03-026.¹ In D.06-07-027, we authorized Pacific Gas and Electric Company (“PG&E”) to deploy its Advanced Metering Infrastructure (“AMI”) project, otherwise known as the Smart Meter program. In D.09-03-026, we authorized PG&E to upgrade certain aspects of its Smart Meter program, and to increase revenue requirements to recover the related costs of the upgrade.

Heather Epps’ application for modification claimed that PG&E’s lack of proper testing and research before implementing Smart Meters caused system-wide problems with billing and service, and necessitated PG&E’s upgrade of the Smart Meter program. (Application of Heather Epps for Modification of D.06-07-027 and

¹ *Final Opinion Authorizing Pacific Gas and Electric Company to Deploy Advanced Metering Infrastructure* [D.06-07-027] (2006) ___ Cal.P.U.C.3d ___, as modified by *Order Correcting Clerical Omission in Decision 06-07-027* [D.06-08-002] (2006) ___ Cal.P.U.C.3d ___; *Order Modifying Decision 06-07-027* [D.06-09-005] (2006) ___ Cal.P.U.C.3d ___, *Order Modifying Decision 06-07-027 Regarding Pacific Gas and Electric Company’s Authority to Deploy Advanced Metering Infrastructure* [D.07-09-037] (2007) ___ Cal.P.U.C.3d ___, and *Decision Granting a Modification to Decision 06-07-027* [D.09-10-037] (2009)) ___ Cal.P.U.C.3d ___; *Decision on Pacific Gas and Electric Company’s Proposed Upgrade to the SmartMeter Program* [D.09-03-026] (2009) ___ Cal.P.U.C.3d ___.

D.09-03-026 (“App. for Mod.”) dated September 17, 2010, p. 3.) The application characterized the deployment of PG&E’s Smart Meters as a “\$500,000,000 mistake” that was being paid for by ratepayers. (App. for Mod., pp. 3-4.) It therefore requested that the Commission shift all costs related to the Smart Meter program upgrade to PG&E and its investors.

The Decision dismissed the application for modification because it found the application failed to present new facts that, if confirmed through evidentiary hearing, would warrant the changes proposed in the application. (D.11-05-027, p. 1.)

Heather Epps timely filed a rehearing application of the Decision. The rehearing application alleges that the Decision erroneously determined that the previous application did not present new facts justifying changes to D.06-07-027 and D.09-03-026. PG&E filed a response opposing the rehearing application.

We have reviewed each of the allegations raised in the rehearing application, and are of the opinion that the granting of a rehearing is not warranted. Thus, we deny the application for rehearing of D.11-05-027.

II. DISCUSSION

The rehearing application disagrees with the Decision’s conclusion that the application for modification failed to present new facts that would warrant changes to D.06-07-027 and D.09-03-026. (Rehrg. App., p. 1.)² The rehearing application alleges that the Commission mischaracterized and misunderstood the argument made in the application for modification. (Rehrg. App., p. 2.) The rehearing application takes issue with the following statement in the Decision:

The major allegation of [Heather Epps] is that there was a failure by PG&E, and implicitly by the intervenors, including the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN), to bring to the Commission facts concerning Smart Meter technology that should have

² The rehearing application is not paginated. For purposes of this order, the rehearing application is paginated with the page including footnote 1 being page 1.

indicated to the Commission that the technology was risky and should have led the Commission to reject PG&E's initial Smart Meter proposal.

(Rehrg. App., p. 2 citing D.11-05-027, p. 8.) According to the rehearing application, the application for modification did not argue that the original Smart Meter proposal was risky, but rather presented new information that the Smart Meters in the original proposal were already obsolete before they were installed. (Rehrg. App., p. 2.)

The purpose of a rehearing application is to alert the Commission to legal error. A rehearing application must set forth specifically the grounds on which the applicant considers the decision to be unlawful. (Pub. Util. Code, § 1732; Code of Regs., tit. 20, § 16.1, subd. (c).) Heather Epps' rehearing application fails to specify what law the Commission violated or explain how disagreement with a conclusion in the Decision constitutes legal error.

The rehearing application also does not demonstrate that the Decision erred in concluding that the application for modification failed to present new facts that would warrant changes to D.06-07-027 and D.09-03-026. Contrary to the rehearing application's assertions, the application for modification did not present new, previously unconsidered evidence that the Smart Meters were already obsolete before they were installed. (See Rehrg. App., p. 2.) The application for modification cited to statements President Michael Peevey made during a joint informational hearing on March 15, 2010 before the Senate Energy, Utilities and Communications Committee and the Assembly Utilities and Commerce Committee. (App. for Mod., p. 9.) During the hearing, President Peevey stated that the initial roll out of the Smart Meters was "a judgment call" and "it turned out to have been a mistake." (App. for Mod., p. 9.)³ President Peevey also stated that the ratepayers were paying for the Smart Meter upgrades. (App. for Mod., p. 9.) According to the application for modification, President Peevey's statement that a

³ A video stream of the hearing is available at: <http://www.calchannel.com/channel/viewvideo/1129>. The cited portions of the hearing take place at approximately 38:05-38:42.

mistake occurred is “the only new fact needed in order to review [the application for modification.]”(App. for Mod., p. 10.)

As explained in the Decision, the statement by President Peevey is “an ex-post-facto look at an ex-ante decision.” (D.11-05-027, p. 10.) The statement does not provide any information about what technology was available at the time the Commission approved the initial Smart Meter proposal, and therefore, does not support the assertions in the rehearing application that the application for modification presented new evidence that the Smart Meters “were already obsolete before they were installed.” (See Rehr. App., p. 2.)

The rehearing application also cites to the “new evidence” presented in the Reply to Pacific Gas and Electric Company’s Protest to the Application of Heather Epps for Modification of D.06-07-027 and D.09-03-026 (“Applicant’s Reply”) dated November 5, 2010.⁴ (Rehr. App., p. 3, fn. 3.) The information presented in Applicant’s Reply also does not support the assertion that Smart Meters “were already obsolete before they were installed.” (See Rehr. App., p. 2.)

Applicant’s Reply argued that the Home Area Network (“HAN”) technology used by PG&E for the upgrade, ZigBee, was in development in the early 2000’s and being discussed in the tech media as early as April 2004.⁵ (Applicant’s Reply, p. 4.) The Decision explained that this information would not necessarily warrant modification of D.06-07-027: “even if information about upcoming ZigBee software were provided in the record of that proceeding, it would not have been unreasonable, in the face of widespread delays in the availability of commercial software for the

⁴ The examples provided in Applicant’s Reply are based on online articles dated April 20, 2004 and October 1, 2005. (See Applicant’s Reply, pp. 4-5.) These articles are not “new evidence” but information available prior to the Commission’s approval of PG&E’s initial AMI proposal. There is no explanation as to why this information could not have been presented to the Commission earlier. (See Code of Regs., tit. 20, § 16.4, subd. (d).)

⁵ For upgrades relating to the HAN gateway, PG&E proposed and the Commission approved a combination of Homeplug and ZigBee devices. (D.09-03-026, *supra*, at pp. 57-58, 63 (slip op.).)

Commission to proceed exactly as it did.” (D.11-05-027, p. 10.) Indeed, the article regarding ZigBee cited in the Applicant’s Reply states:

IEEE 802.15.4 is a new standard that still needs to pass through the circles of rigorous technology critics and establish its own place in the industry. Predictions for the future of ZigBee-enabled devices are a popular topic for numerous market-research firms. But as with any crystal ball reading, the results of those analyses are subject to interpretation.

(Galeev, Mikhail, *Home Networking with Zigbee* (April 20, 2004)

<http://www.eetimes.com/design/communications-design/4006430/Home-networking-with-Zigbee.>)

Applicant’s reply also argued that remote connect/disconnect technology was available and being used as early as October 1, 2005 in Wisconsin by Shawano Municipal Utilities. (Applicant’s Reply, p. 5.) This information also did not necessarily warrant modification of D.06-07-027 or D.09-03-026. PG&E did consider connect/disconnect technology at the time of its initial application. The most cost-effective option at that time was a connect/disconnect collar mounted separately and in conjunction with an electromechanical meter. (D.09-03-026, *supra*, at p. 14 (slip op.)) PG&E’s original project included adding a connect/disconnect collar to 600,000 electromechanical meters. (*Ibid.*) Because of advances in solid state meter and load limiting switch technology, as well as decreases in the relative costs of the components, PG&E upgrade proposal included installation of integrated load limiting switches for all of PG&E’s residential and single phase, 200-amp, self-contained meter customers. (*Ibid.*) The application for modification or Applicant’s Reply did not present any information that the connect/disconnect technology approved in D.09-03-026 was available and cost-effective at the time of PG&E’s initial application.

The state of technological developments is only one factor the Commission considers in approving any upgrades. As the Commission has noted: “Technological obsolescence alone is not sufficient to warrant replacing the system. That is why we apply an economic test – whether or not the present value of all benefits is greater than

the present value of the revenue requirement paid by customers for the useful life of the system.” (D.06-07-027, *supra*, at pp. 28-29 (slip op.)) Based on the record, D.06-07-027 found that PG&E’s AMI proposal was likely to be cost effective. (*Id.* at p. 67 [Conclusion of Law 13] (slip op.)) Evidence in the record of that proceeding provided: “(t)he systems selected by PG&E are reasonable, relatively mature, and have evolved to strike an acceptable balance in cost, functionality and flexibility.” (*Id.* at p. 19 (slip op.)) D.09-03-026 also found the upgrades to be cost-effective. (D.09-03-026, *supra*, at p. 153 (slip op.); see also *id.* at p. 177 [Finding of Fact 9] (slip op.) [finding that certain technologies have evolved and become more cost effective over the course of PG&E’s Smart Meter project].) The application for modification did not present any new information that would warrant modification of these conclusions in D.06-07-027 and D.09-03-026.

The rehearing application fails to demonstrate the Decision misunderstood or mischaracterized the argument in the application for modification. As described above, the rehearing application’s claims that the application for modification presented information that the technology was obsolete, not risky, are unsupported. Rather, the application for modification argued that PG&E should have known about and incorporated certain technological developments in its initial AMI proposal. (See App. for Mod., p. 8; see also Applicant’s Reply, p. 5.) It is this argument we addressed in the Decision when we discussed the risks and uncertainty of proceeding with the technology proposed by PG&E. (See D.11-05-027, pp. 8-10.) We found the argument unpersuasive. (D.11-05-027, p. 13.) We considered the information actually presented in the application for modification and Applicant’s Reply and concluded that there were no facts presented that would warrant a modification of D.06-07-027 and D.09-03-026. (See e.g. D.11-05-027, p. 11.)

For the foregoing reasons, the rehearing application fails to demonstrate that the Decision erred in dismissing the application for modification on the basis that the application failed to present new facts that would warrant the changes proposed in the application. (See D.11-05-027, p. 1.) The rehearing application also fails to demonstrate

that there was any legal error in the Decision. Accordingly, we deny the rehearing application.

III. CONCLUSION

For the reasons stated above, rehearing of D.11-05-027 is denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.11-05-027 is denied.
2. Application 10-09-015 is closed.

This order is effective today.

Dated February 1, 2012 , at San Francisco, California.

MICHAEL R. PEEVEY
President
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

Commissioner Timothy Alan Simon, being necessarily absent, did not participate.

Commissioner Michel Peter Florio, being necessarily absent, did not participate.