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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).	Application 11-03-014 (Filed March 24, 2011)
And Related Matters.	Application 11-03-015 Application 11-07-020

WILNER & ASSOCIATES' OPENING BRIEF

David L. Wilner
Wilner & Associates
P.O. Box 2340
Novato, CA 94948-2340
415-898-1200
DavidLWilner@aol.com

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WILNER & ASSOCIATES' OPENING BRIEF

Pursuant to the Assigned Commissioner's Ruling Amending Scope of Proceeding to Add A Second Phase ("Amended Scoping Ruling"), Wilner & Associates ("Wilner") hereby submits its Opening Brief as follows:

I. BACKGROUND

On February 1, 2012, the California Public Utilities Commission ("Commission") issued Decision ("D.") 12-02-014 allowing Pacific Gas and Electric Company's ("PG&E") customers to opt out of the Smart Meter program by choosing to have a conventional analog electric meter instead of a Smart Meter. Shortly thereafter, similar decisions were issued for San Diego Gas & Electric ("SDG&E") in D.12-04-019 and for Southern California Edison ("SCE") in D.12-04-018. Investor-owned utility customers are required to pay a one-time fee of $75 and a monthly recurring charge of $10 to opt out of the Smart Meter programs with the understanding that these fees and charges are temporary, and subject to change and possibly elimination depending on the outcome of the second phase of this proceeding.

II. ISSUES

One of the issues raised in the Amended Scoping Ruling is the question of whether the Americans with Disabilities Act ("ADA") or Public Utilities ("P.U.") Code § 453(b) limits the Commission's ability to adopt opt-out fees for residential customers who elect to have an analog meter for medical reasons (Amended Scoping Ruling, p. 6). The definition of a "customer" according to PG&E's tariff and probably the other investor-owned utilities in this proceeding is the person in whose name service is rendered (see, Electric Rule 1, Sheet 6). What about the other members of a family that occupy a house, an apartment, condominium, or some other living space that may have a medical condition? Whatever the Commission decides on this issue

must cover every member of the household. Next, what constitutes a "medical condition?" Could it be insomnia, anxiety, stress, depression, chronic migraines, medical implants or some other malady? To avoid any ambiguity on this issue, the Commission must establish guidelines to explain what constitutes such a condition. How a medical condition is proven is something else the Commission must decide so that customers are not at the mercy of the utilities to make this determination. What about people that suffer from electromagnetic sensitivity, and have a medical problem as a result? The Architectural and Transportation Barriers Compliance Board ("Access Board") is an independent federal agency devoted to accessibility for people with disabilities, and provides guidelines concerning buildings and facilities covered by the ADA. The Access 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" (see, Indoor Environmental Quality NIBS IEQ Final Report 7/14/05).

Since that time, there has been a greater awareness about electromagnetic sensitivity particularly in instances where wireless devices including Smart Meters have been installed at customers' homes across the US. This issue was one of the driving forces behind the Commission's decision adopting an opt-out plan in California. Now that the Commission will consider a medical condition as a factor for customers to choose an analog meter rather than a Smart Meter, it is very important for the Commission to understand that people that suffer from electromagnetic sensitivity are sensitive to radio frequency ("RF") radiation levels substantially lower than those considered safe by the Federal Communications Commission ("FCC") guidelines. As such, these people are entitled to an accommodation under the ADA and § 453(b) of the P.U. Code, and they should not be required to pay anything to opt-out.

As far as the legal question of whether § 453(b) limits the Commission's ability to adopt opt-out fees, it is clear that when customers with a medical condition are required to pay for another service (opt out) due to their health problems, they are placed at a disadvantage. Therefore, according to P.U. Code § 453(b), that requirement would be unlawful. It should also be unlawful to require customers to pay an additional cost to avoid a utility service that might be harmful to their health.

As we embark on the second phase of this proceeding, it is important to note that the Commission is willing to assume that because customers can choose a conventional analog meter rather than a Smart Meter (opt out), there is no reason to worry about health and safety concerns. In fact, in *Wilner & Associates v. Pacific Gas and Electric Company*, D.12-05-023, the Commission states:

> *D.12-02-014 effectively provides complete relief to any customer concerned about the effects of EMF radiation and renders further proceedings in this docket moot* (p. 1).

Conclusion of Law No. 1 in the Decision says:

> *D.12-02-014 provides PG&E customers with a means of avoiding exposure to smart-meter-generated EMF radiation* (p. 5).

However, nothing could be further from the truth. A recent interview with scientist Barrie Trower which appeared in *Weaponized Microwave Radiation Targeting You* makes this point more clearly than anything else that has appeared in the literature concerning adverse effects from wireless devices:

> *. . . now if you have a little girl and I'm talking about girls ten years old, all of her eggs that are to be fertilized are in her body. If she sits with Wi-Fi in front of her the Wi-Fi is going through the eggs. And what most scientists do not know and certainly government officials do not know is that the DNA in these eggs can absorb ten times more radiation than other DNA in the body . . .*
> http://www.youtube.com/playlist?list=*PLEF47E5563AA26446*

Because the Commission is unwilling to consider health issues in this proceeding, one of the most important things in our lives is being overlooked: children are being exposed to RF radiation from wireless devices including Smart Meters installed by PG&E and the other investor-owned utilities in California. As Mr. Trower points out in the interview, the younger they are, the less able their immune systems are able to protect them from such toxins. In fact, a newborn baby does not have an immune system, and typically, it takes approximately 18 years before the human immune system is fully developed.

So, when the FCC tells us that its RF exposure levels established for wireless devices such as Smart Meters are safe, keep in mind these standards apply to an adult male six foot tall weighing 200 pounds – not a child or the rest of the population. Moreover, when the Commission states that it finds uncontested evidence that Smart Meters comply with FCC regulations (see, D.12-06-017, p. 3), the Commission is relying on a false premise. The investor-owned utilities are quick to point out that these exposure levels are low enough to justify the installation of Smart Meters, but obviously, there is also something fundamentally wrong with this claim. Think about it this way: when you go to the drug store to buy medications, you purchase the correct dosage for an adult or a child. However, there is no dosage standard established for RF radiation that is considered safe for a child. Even more disturbing is the fact that DNA damage to the young girl described in Mr. Trower's interview is irreparable, and the mutations will be inherited by future generations. It must be noted that people of all ages are susceptible to radio wave sickness, and the reference here to children is to show that they are more vulnerable. How in the world can the Commission insist that we are not going to consider health concerns in this proceeding (see, Amended Scoping Ruling, p. 3) when the risks are so serious?

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What happens if the so-called safe levels established by the FCC turn out to be unsafe? Who will be responsible for the harm to utility customers and their children, and their grandchildren, and so on? The second phase of this proceeding should not be about how much someone is going to be charged to protect their own health and that of their children, but instead how we can prevent more brainwashing like the "smoking is not bad for you" industry campaign which has ended up costing billions of dollars to provide treatment for illnesses associated with smoking. And what about the people that died or will die because they were led to believe such claims? The U.S. Health Free Congress stated in its recent *Resolution of Electromagnetic Health* – Resolution 2B (June 14, 2012) that:

> ***2. Assuring citizens are empowered to 'opt-out' from biologically disruptive exposures to electromagnetic fields in their homes, workplaces and communities.*** *This might involve **1)** establishing cell phone and wireless-free neighborhoods, transportation options, government buildings, schools and classrooms, employment options and public spaces; **2)** removing cellular and wireless technologies near vulnerable populations, such as at or near schools, health care and retirement facilities, as has been recommended by the European Parliament; **3)** repealing Section 704 of the Telecommunications Act of 1996, which took away the rights of state and local governments to stop the erection of cell towers and wireless antennas in their communities based on "environmental" grounds (defined by FCC to include "human health" grounds); **4)** assuring the safer and more secure land-line telephone network remains an option; **5)** assuring citizens in their homes, as well as employees, have the option of a hard-wired internet connection, such as through existing cable, phone line or fiber optics networks; and **6)** assuring the right to 'opt-out' from radiation-emitting wireless utility **'smart meters'** whose metering function can be more safely and economically accomplished using existing hard-wire communications networks.* [Emphasis added.]

As stated in Wilner's Prehearing Conference Statement, the Commission has not made any findings in this or any other proceeding that would inform PG&E's customers as to whether Smart Meters are actually safe (p. 2). Therefore, the utility's customers do not have any way of knowing if they should opt out. The same is true of interference by Smart Meters to medical

equipment such as life support systems, blood pressure monitors, glucose meters, and implants that use wireless communications to relay critical patient data to medical centers. There is also potential interference to emergency communications equipment, ground fault interrupters, motion detectors, baby monitors, garage door openers and other electronic devices that may malfunction as a result of being in proximity of Smart Meters (see, *PG&E Advanced Metering Assessment Report* by the Structure Consulting Group, LLC, pp. 31-32). The Commission must also address these issues in the second phase of this proceeding so that utility customers are aware of potential problems which may prompt them to opt out of the Smart Meter program. This would be consistent with § 451 of the P.U. Code which requires investor-owned utilities to provide electric service that serves to promote their customers' safety, convenience, and comfort as well as § 8360 which specifically states that implementation of the Smart Grid must be safe and secure for the utilities' customers.

Another issue raised in the Amended Scoping Ruling is whether all the costs associated with the opt-out option are paid only by those customers electing the option, or whether some portion of these costs is allocated to all ratepayers and/or utility shareholders (paragraph C, p. 4). Wilner believes that these costs should be borne by the investor-owned utilities' stockholders because none of the problems described above existed before conventional analog meters were replaced with Smart Meters.

Obsolete Mesh Network

Another reason PG&E's stockholders should be required to cover the cost of the opt-out option relates to PG&E's mesh network that supports the Smart Meter deployment. According to Itron, one of the Smart Meter manufacturers that supplies the meters to electric utilities in California, "We believe building new data transmission and collection networks is redundant and

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unnecessary" (http://smartsynch.com/whycellular/). It is important to note that the Itron Smart Meter transmission power is 1 watt or less, and these meters were the ones that were originally proposed for PG&E's deployment, and approved in the Smart Meter decisions. However, it turns out that PG&E decided to use Landis+Gyr and General Electric Smart Meters with Silver Spring Networks communications modules which radiate 2.5 watts of RF energy – more than twice as much. This was a more profitable approach so PG&E dumped the Itron meters and told its customers the alternative was safe. Wilner has asked the Commission to require PG&E to reduce the amount of RF radiation from the Smart Meters to 1 watt or less to create a safer environment (see, *Wilner & Associates vs. Pacific Gas and Electric Company*, Case No. 11-10-028, Relief, p. 8).

PG&E's customers should not be required to pay any costs to upgrade a redundant and unnecessary mesh network in order to opt out of the Smart Meter program. Any such costs should be the responsibility of PG&E's stockholders.

Additional RF Radiation Problems

Another reason investor-owned utility customers should not be required to pay an opt-out fee and monthly charges relates to proposals from AT&T and Verizon to connect their equipment to the customer's side of the Smart Meter so they can collect personal usage data about customers, and share in the huge profits to be made by mining such information for marketing purposes (see, A.11-06-006 and related matters). This will no doubt create an additional level of RF radiation and interference caused by connecting more wireless devices and other equipment to Smart Meters which may be more harmful than what is currently generated on the utilities' side of the meters. Therefore, there will be more customer complaints, and requests to opt out. If the Commission approves these proposals, and it is necessary for

customers to opt out for health and safety reasons, the costs should be borne by AT&T's and Verizon's stockholders.

Maine Supreme Court Decision

On July 12, 2012, the Maine Supreme Judicial Court ("Court") issued a decision relating to Smart Meter concerns in that state (see, *Ed Friedman et al. v. Public Utilities Commission et al*., Decision 2012 ME 90, Docket PUC-11-532). In that decision, the Court noted that "one of the Commission's core regulatory responsibilities is to ensure that public utilities provide 'safe, reasonable and adequate service' to customers" (p. 6). The Maine Public Utilities Commission had argued that health and safety concerns were "resolved by the Opt-Out Orders" allowing customers to choose an alternative to a Smart Meter. The Court disagreed by stating "[h]aving never determined whether smart-meter technology is safe, the Commission is in no position to conclude in this proceeding that requiring customers who elect either of the opt-out alternatives to pay a fee is not 'unreasonable or unjustly discriminatory'" (p. 11). This is the same argument that Wilner is making in this opt-out proceeding. The Commission has made no findings on the health and safety issues as set forth herein, and to require utility customers to pay any costs for opting out is unjust, unreasonable, and discriminatory and therefore inconsistent with § 451 and § 453(b) of the P.U. Code.

These same issues have surfaced in Illinois where the federal court (Federal District Court, Eastern Division) issued an order on June 18, 2012 allowing full discovery to commence in the lawsuit brought by Naperville Smart Meter Awareness against the City of Naperville. This will include **health and safety concerns** (see, *Naperville Smart Meter Awareness v. City of Naperville*, Case No. 11-cv-9299).

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III. CONCLUSION

Unless the Commission addresses and resolves the health and safety issues raised in this proceeding, it will not be in a position to determine whether customers concerned about these matters should be required to pay to opt out of the Smart Meter program. If the Commission fails to perform this regulatory duty, any decision issued in this phase of the proceeding will be subject to judicial review.

Respectfully submitted,

/s/

David L. Wilner
Wilner & Associates
P.O. Box 2340
Novato, CA 94948-2340
415-898-1200
DavidLWilner@aol.com

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