BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 M) for Approval of Modifications to its Smart Meter Program and Increased Revenue Requirements to Recover the Costs of the Modifications.	Application 11-03-014 (Filed March 24, 2011)

REPLY COMMENTS OF AGLET CONSUMER ALLIANCE

ON PROPOSED DECISION OF COMMISSIONER PEEVEY

December 19, 2011

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Aglet Consumer Alliance (Aglet) submits this reply to opening comments on the proposed decision (PD) of Assigned Commissioner Michael Peevey (Agenda ID #10870) in the application of Pacific Gas and Electric Company (PG&E) for approval of changes to its Smart Meter program. The requested changes would allow residential customers to "opt out" of the program in order to reduce radio frequency (RF) emissions on their premises.

Reply comments are due Monday, December 19, 2011. Aglet will file this pleading electronically on the due date.

1. Reply to PG&E

PG&E states that it "supports customer choice." (PG&E opening comments, p. 1.) Apparently that support is limited to situations where customer choice leads to more utility investment in Smart Meters, not where customers want analog meters that are less expensive than Smart Meters and reduce health risks. The Commission should promote customer choice with respect to both Smart Meters and time-of-use metering. Customers should be allowed to decide if the alleged benefits of time-of-use pricing outweigh perceived health risks from RF emissions and Smart Meters.

PG&E comments that it is feasible to modify Smart Meters to allow storage of energy usage data when the meter radio is off, but the modifications will add 5% to 10% to unit costs. (PG&E opening comments, p. 4, footnote 4.) Those numbers are untested, as are virtually all elements of PG&E's showing in this proceeding. A few pages later, in discussion of its cost recovery proposal, PG&E argues, "The record on PG&E's proposed radio-off costs is already sufficient." (PG&E opening comments, p. 8.) PG&E continues to hope that the Commission will adopt its cost estimates. (PG&E opening comments, p. 2, second bullet point; see also p. 13.) Aglet strongly opposes approval of the utility's numbers. PG&E's estimates include information provided in comments to the PD, clearly too late to allow other parties to challenge PG&E's showing. The Commission should reject PG&E's position and hold evidentiary hearings on opt out costs, health impacts of RF emissions, and related policy issues.

PG&E wrongly states that "the Commission has mandated the utility to file its application." (PG&E opening comments, p. 6.) In fact Commissioner Peevey, who is sponsoring the PD, by himself requested that PG&E file an "opt out" application. Peevey does not speak for the Commission as a whole.

In arguing for approval of the proposed cost recovery scheme, PG&E relies on the conclusion in the PD that "there is no single non-communicating opt-out alternative that offers a significant cost-advantage over any other" excepting the wired option. (PG&E opening comments, p. 6.) PG&E also cites the PD in concluding that "the majority of PG&E's costs are unlikely to change significantly among the different opt-out alternatives considered by the Commission." (PG&E opening comments, p. 7.) PG&E's faith in the PD is misplaced. Aglet has shown that PG&E's cost estimate for the analog meter option could be reduced by as much as 40%. (Aglet opening comments, pp. 3-4.) There is much uncertainty about the costs of the various options considered in the PD.

In discussion of the requested balancing account treatment of opt out program costs, PG&E argues that "the Commission always retains the right to verify the costs recorded in PG&E's balancing accounts after the fact." (PG&E opening comments, p. 7.) Aglet is unsure what meaning PG&E gives the word "verify" but it suggests some form of accounting audit. That is not good enough. The Commission must be clear that it will conduct a full reasonableness review of opt out costs and revenues, including review of the necessity and prudence of all incurred costs.

2. Reply to SCE

Southern California Edison Company (SCE) asserts without proof, "Interval data provided by the non-communicating smart meter is necessary to support the

Smart Grid." (SCE opening comments, p. 3.) Aglet disagrees. Smart Grid objectives are vague at this stage of development, and PG&E forecasts that fewer than 3% of its customers will opt out of Smart Meter service. Collection of energy usage data from 97% of all customers should provide ample factual evidence of relevant usage patterns. Aglet is aware of no law or regulation that might require every single utility customer to participate in time-of-use metering or the wonders of the smart grid, despite RF health risks.

SCE argues that reduced opt out fees would increase customer participation, then asserts, "A substantial increase in the opt-out participation rates could negatively affect the achievement of California's Smart Grid objectives, as well as the Commission-approved AMI operation, demand response, and conservation benefits." (SCE opening comments, pp. 4-5.) SCE ignores the benefits of opting out: reduced risk of RF hazards for electrically sensitive citizens, improved public safety, and promotion of customer choice. Smart grid objectives, demand response benefits, and energy conservation savings that might be achieved by individual customers are speculative at best. The Commission should reject opt out program elements that would discourage opting out or force customers to pay for their own safety.

SCE asks the Commission to approve PG&E's balancing account proposal, which "would ensure that no more and no less than actual costs (related to actual participation rates) are ultimately recovered from customers ...." (SCE opening comments, p. 8.) SCE goes on to assert that review of balancing account entries in ERRA proceedings would "ensure that all entries to the accounts are stated correctly and are consistent with Commission decisions." (Same page.) Review of utility costs to ensure that only actual costs are booked to balancing accounts, or that accounting entries are stated correctly, is inadequate to protect ratepayers. SCE incorrectly presumes that all actual utility costs are necessary and prudently incurred. If the Commission adopts any memorandum account or balancing account scheme, the adopted ratemaking should include comprehensive reasonableness reviews of costs and revenues.

3. Reply to DRA

The Division of Ratepayer Advocates (DRA) "generally supports the PD's goal of ensuring that opt-out customers, like all retail customers, are able to participate in any time-variant rate programs adopted by the Commission." (DRA opening comments, p. 2.) Aglet disagrees. Allowing a small percentage of PG&E customers to retain analog meters, which appear to cost less than radio off Smart Meters and provide affirmative protection against RF radiation, would not hinder achievement of California's policy goals. In Aglet's opinion, the Commission made a huge blunder when it mandated Smart Meters without allowing for customer choice and without consideration of potential health hazards. It should not compound that mistake by forcing individual customers to prepare for time-of-use programs that have uncertain potential for material benefits.

Aglet supports DRA's recommendations that the Commission should "clarify that PG&E must file a separate application to recover the net costs associated with providing the opt-out option and specify that cost recovery will be subject to reasonableness review." (DRA opening comments, p. 10.)

4. Reply to TURN

The Utility Reform Network (TURN) comments that "the PD fails to satisfy customer interests by failing to provide the most desired outcome – the use of an analog meter." (TURN opening comments, p. 2; see also pp. 5-7.) Aglet agrees. The Commission should approve an alternate PD that adopts the analog meter option.

TURN supports payment of opt out program costs by opt out customers without "socialization" of costs by assigning them to non-participating customers. (TURN opening comments, pp. 10-12, 15-16.) TURN recognizes that cost causation should be balanced with other ratemaking goals, including affordability, but TURN relies on Commission language to defend payment by opt out customers. For example, "To the extent that an identifiable service is provided to a specific customer without charge or at a charge that is below the incremental cost of providing service, the general body of ratepayers subsidizes the customer receiving the service." (TURN opening comments, pp. 10-11, citing Decision 04-07-022, at mimeo. p. 139.)

TURN overlooks the history of PG&E's Smart Meter program. Prior to the instant application, all Smart Meter costs were "socialized" whether or not individual customers wanted a Smart Meter, were candidates for time-of-use metering or energy conservation programs, were electrically sensitive, or lived in a community whose local government opposed Smart Meters. Special rates for opting out would not be necessary if customers were required to opt in to Smart Meter service and pay associated costs. At this late stage of Smart Meter installation by PG&E and other utilities, most of the costs of opting out should be allocated to all customers in the same way that all costs of Smart Meters are allocated to all customers. Approval of high opt out charges would be especially egregious because health and safety concerns will drive most customer decisions to opt out. As a policy choice, the Commission should "socialize" safety costs.

For the same reasons Aglet opposes TURN's request to cap potential opt out costs that might be allocated to non-participating ratepayers. (TURN opening comments, p. 16.)

5. Reply to "Commenting Parties"

The "Commenting Parties" note that Public Utilities (PU) Code Section 745 "would appear to prohibit charges for opting out of equipment related to [an opt out] rate structure ...." (Commenting Parties opening comments, p. 9, footnote 12.) There is a curious circularity to the PD's establishment of opt out service because interval energy consumption data are "critical to the Commission's policies to implement a demand response program and TOU rates." (PD, Finding of Fact 8, p. 40.) According to the PD, analog meters cannot measure interval energy consumption, and therefore the Commission is constrained to adopt Smart Meters or other digital meters. The PD would then adopt rates that require opt out customers to pay higher rates than other Smart Meter customers.

Aglet suggests that according to the PD's logic, radio off Smart Meters are in fact time-of-use meters, to be installed in advance of future time-of-use rates. PU Code Section 745 prohibits extra charges for time-of-use pricing. The law states: "The commission shall not require or permit an electrical corporation to do any of the following: ... Employ mandatory or default real-time pricing, without bill protection, for residential customers prior to January 1, 2020." (PU Code Section 745.b.(3).) Bill protection means that customers on mandatory or default time-variant pricing "will be guaranteed that the total amount paid for electric service shall not exceed the amount that would have been due under the customer's previous rate schedule." (PU Code Section 745.a.(1).) It appears to Aglet that charging opt out customers for new equipment needed to promote the Commission's time-of-use rate program would be contrary to the bill protection required by PU Code Section 745.

6. Reply to City and County of San Francisco

The City and County of San Francisco (City) succinctly identifies the principal flaws in the PD. First, the PD makes findings "without a hearing and without allowing the parties to this proceeding – other than PG&E – to submit any evidence." (City opening comments, pp. 1-2; see also discussion at pp. 2-4.) "Second, the fees imposed on customers are arbitrary and appear to be intended to dissuade customers from opting out." (City opening comments, p. 2; see also pp. 4-5.) In closing, the City argues, "Given that shareholders have continued to earn profits on the SmartMeter program, it is only fair that they shoulder at least some of the opt-out costs." (City opening comments, p. 5.) Aglet concurs completely with City's arguments.

7. Reply to DRSG

The Demand Response and Smart Grid Coalition (DRSG) submitted comments in response to the PD by e-mail to the ALJ and all Commissioners. DRSG filed a Notice of Ex Parte Communication on December 14, 2001, two days after the due date for filing of opening comments.

DRSG is not a party to the proceeding, did not serve timely comments on all parties, and did not follow the Commission's rules on formatting of comments. The Commission should relegate the DRSG e-mail to the correspondence file and should give the underlying comments no weight whatsoever.

Substantively, "DRSG recommends that the costs of opting out of smart metering should be borne exclusively by customers electing to opt out. It does not make sense for all ratepayers to subsidize one segment of customers who demand and receive a different and more-expensive level of service." (DSRG, first unnumbered page.) If only the Commission had relied on DRSG's argument when it first approved PG&E's Smart Meter program! Had PG&E supplied Smart Meters only to customers that demanded and received Smart Meter service, and recovered costs from those customers, then this proceeding would be unnecessary. It is too late to change Smart Meter cost recovery policy. The Commission should disregard DRSG's showing.

* * *

Dated December 19, 2011, at Novato, California.

/s/

James Weil