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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).

And Related Matters.

Application 11-03-014
(Filed March 24, 2011)

Application 11-03-015
Application 11-07-020

WILNER & ASSOCIATES' PREHEARING CONFERENCE STATEMENT

Dated: May 14, 2012

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WILNER & ASSOCIATES' PREHEARING CONFERENCE STATEMENT

Pursuant to Rule 7.2 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the assigned Administrative Law Judge's ruling of April 24, 2012, Wilner & Associates ("Wilner") hereby files this Prehearing Conference Statement in the above-entitled matter:

I. BACKGROUND

On February 9, 2012, the Commission ordered Pacific Gas and Electric Company ("PG&E") to provide an electric analog meter in place of a SmartMeter to any customer for a one-time fee of \$75.00 plus a monthly charge of \$10.00. Low-income customers may exercise the same option for a one-time fee of \$10.00 and a monthly charge of \$5.00. See Decision ("D.") 12-02-014. PG&E also removes the wireless communications module on the customer's gas meter at no additional cost.

This was done by the Commission in response to customer concerns about health, safety, privacy, cyber security, and other issues relating to SmartMeters. The decision also provides for a second phase of this proceeding to consider cost and cost allocation issues associated with offering the analog meter option (see D.12-02-014, p. 28); and a determination of whether the option would be available on a community-wide basis (see p. 38).

II. ARGUMENT

It appears that the Commission believes the opt-out option provides complete relief to anyone that is concerned about radio frequency ("RF") radiation, and the possibility that it may cause adverse health effects (see *Wilner & Associates v. Pacific Gas and Electric Company*, Case 11-10-028, proposed decision, p. 1). Unfortunately, this is not true. People are surrounded by SmartMeters (millions of them) in their neighborhoods and surrounding areas. The

installation of an analog meter for a relatively small number of PG&E's customers will not mitigate the potential health and safety impacts from RF radiation (an estimated 16 million watts of pulsed RF energy) throughout PG&E's service area.¹

The Commission has not made any findings in this or any other proceeding that would inform PG&E's customers as to whether SmartMeters are actually safe. Therefore, the utility's customers do not have any way of knowing if they should opt out. The same is true of interference by SmartMeters 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 an issue of 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 SmartMeters.

Based on the foregoing, the Commission should not approve any fees for opting out unless it makes a determination on these important health and safety issues, and the results are made available to PG&E's customers as well as the public. If there are inherent problems with the SmartMeter deployment, then it should be up to PG&E's stockholders to bear any costs for providing an analog meter option or other mitigation measures. The same should apply to San Diego Gas and Electric Company ("SDG&E") and Southern California Edison ("SCE") because they have also been ordered to provide an opt-out option to their customers.

III. PROPOSED SCOPE OF SECOND PHASE OF PROCEEDING

1. Wilner proposes that the second phase of the proceeding include a review by the

¹ It also appears that the Commission believes that because customers can choose an analog meter instead of a SmartMeter, it is not necessary to adjudicate the issues raised in the Wilner complaint that relate to the SmartMeter deployment, and were declared beyond the scope in the first phase of this proceeding (see proposed decision dismissing complaint, p. 4). This would leave the questions in Exhibit 1 attached hereto to be answered in the second phase of this proceeding.

Commission identifying the number of people that have opted out to date, and how many are expected to exercise that option in the future. If it turns out that there is a much smaller number than estimated by PG&E, this would reduce the cost to the utility and the possible financial impact to its stockholders.

2. The review by the Commission should also determine whether the opt-out program has provided relief to customers with health and safety issues related to SmartMeters. This is to ensure that customers are benefitting from the opt-out option.

3. The Commission should also determine what future services will be offered by PG&E, SDG&E, and SCE utilizing their SmartMeter deployment and mesh networks to provide Internet access and other wireless services to their customers. This will allow the Commission to evaluate potential health impacts and other issues that may arise as a result of increased use of the Advanced Metering Infrastructure ("AMI").

4. The Commission should also make the same type of determination concerning the Home Area Network ("HAN") service. This would impact the utilities' customers since it will increase the amount of RF radiation on their premises and the surrounding areas.

5. Another issue to be reviewed by the Commission is the amount of RF energy generated by the utilities' data collection points serving large numbers of SmartMeters in a particular area (as many as 5,000). This is something that has not been considered previously, and does have an impact on the utilities' customers.

6. The Commission should determine if it should require PG&E and the other utilities to revise their tariffs to allow customers with a medical condition to opt out of the SmartMeter program at no cost pursuant to Public Utilities Code § 453(b). This includes customers that are electrically sensitive, and therefore entitled to an accommodation under the Americans with Disabilities Act.

7. The Commission should also determine the health risks and possible RF radiation interference caused by co-location of SmartMeters in building complexes and other multi-tenant settings because in many instances the SmartMeters are installed too close to each other. The FCC requires a separation of at least approximately 7.8 inches. See FCC Part 15(C). This is a situation where the Commission should not impose a fee to opt out because the utilities have not installed the SmartMeters properly.

Community Opt-Out

8. PG&E contends that the Commission has exclusive jurisdiction over deployment of the AMI system in PG&E's service area. Therefore, counties, cities, and other municipal agencies do not have the authority to decide whether SmartMeters and the mesh network may be installed in their jurisdictions. This is incorrect. The fact is that most municipal agencies do have franchise agreements that allow PG&E to use public right-of-way and related facilities to provide electric service to commercial and residential customers. Some of those agreements specifically state that an electric meter and wiring to the customers' homes (and businesses) is subject to local jurisdiction (see City of Novato franchise agreement attached hereto as Exhibit 2). The same would apply to the other investor-owned utilities that have been ordered by the Commission to provide an opt-out option.

IV. CONCLUSION

There is no question that the Commission has a constitutional and statutory duty to protect the public's health and safety. In the second phase of this proceeding, the Commission must expand the scope to determine whether the AMI deployment raises concerns about these issues and, if so, whether the utilities' customers or stockholders should bear the cost for any remediation which may be necessary. So far, the federal government has contributed

approximately \$1.2 billion in stimulus funds to implement the AMI deployment in PG&E's service area, and the utility's customers are being required to pay another \$1.2 billion to cover the remainder of the cost. It would be unjust and unreasonable to expect PG&E's customers to pay an opt-out fee to avoid potential health and safety risks that should have been identified and corrected before the deployment was implemented. This should also apply to the other investor-owned utilities in this proceeding.

Respectfully submitted,

/s/

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