

**BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION OF
STATE OF CALIFORNIA**



FILED

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Application of Wilner & Associates for
Modification of D.06-07-027 and D.09-03-026

Application _____
A1101002

**APPLICATION OF WILNER & ASSOCIATES
FOR MODIFICATION OF D.06-07-027 AND D.09-03-026**

Pursuant to Rules 2.1 and 2.2 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Wilner & Associates ("applicant") hereby submits this application for modification of the above-mentioned decisions granting Pacific Gas and Electric ("PG&E") authority to deploy the SmartMeter program in California.

I SUMMARY

Applicant is a consultant firm that assists clients in identifying Electromagnetic Fields ("EMFs") in their environment, and makes recommendations for mitigation measures. Applicant also provides these services to the elderly and people with medical problems at no cost when they cannot afford to pay a fee.

Many of these problems are caused by electrical wiring mistakes in buildings that generate high levels of EMFs. This can lead to short circuits, fires, shock hazard, and interference to nearby electrical devices. The State of California initiated an EMF program to educate schools and electricians about those issues, and how to

correct them (see California Electric and Magnetic Fields Program, a project of the California Department of Health Services and the Public Health Institute, 1999).

EMFs are also generated by SmartMeters, and this has raised health concerns by electric utility subscribers. Applicant is not alleging that the SmartMeters radiate Radio Frequency (RF) signals that exceed those established by the Federal Communications Commission ("FCC"). However, such radiation does affect people that suffer from Electromagnetic Hypersensitivity ("EHS") even though it is far below those levels that are known to provide adverse effects in unaffected humans (see IEEE Eng. Med. Biol. 173-175, 2002). The same report also notes that the severity of the symptoms vary greatly. In some cases, they were serious enough to prevent an EHS individual from carrying out his or her everyday activities. The study shows a list of symptoms in decreasing order of frequency:

- Nervous system symptoms (e.g. fatigue, stress, sleep disturbances)
- Skin symptoms (e.g. facial prickling, burning sensations, rashes)
- Various body symptoms (e.g. burning sensations)
- Eye symptoms (e.g. burning sensations)
- Various less common symptoms, including ear, nose, and throat symptoms, and digestive disorders

A more comprehensive study on EHS concludes that: *"It is clear that EMF sensitivity is a real phenomenon in some environmentally sensitive patients, because*

some had consistent reactions while none of the controls did. This study must be considered as only preliminary, but the evidence clearly points to sensitivity in some people" (see Journal of Bioelectricity, 10(1&2), 241-256, 1991.)

Because the Commission has not established specific rules and practices for certain health concerns raised by subscribers relating to the SmartMeter deployment, they do not have an opportunity to opt-out even though they may have a legitimate reason for doing so.

Applicant will introduce evidence at the time of hearing in this matter to show that this is a serious problem that requires experts to identify and eliminate the sources of EMF radiation, when possible. In fact, one expert will testify that he has more than twelve years experience working with people that have EHS symptoms.

It is also important to note that because the Commission has exclusive jurisdiction over issues related to EMF exposure from regulated utility facilities, people cannot seek a remedy for the problem in Superior Court (see D.06-01-042, p 20). Therefore, the Commission is the agency of last resort.

There is also an issue concerning the SmartMeter's capability of disconnecting a subscriber's power remotely, and the possibility this might occur inadvertently or as a result of a security breach. This would be a serious problem for people that are on oxygen or other life support systems. There is also a matter of disconnecting power to water treatment plants, lift pumps, medical facilities, emergency response centers, and emergency radio communications systems as well. These are just a few examples of entities that might be affected. In addition, there is potential

damage to subscribers' electrical equipment in the event the power is shut off unexpectedly, and there is not an opportunity for them to disconnect it before the power is restored. This is a problem that PG&E is well aware of, and warns customers about the possibility.

The Commission acknowledges this issue, and the need for testing of the SmartMeters in a lab that replicates PG&E's system (see D.09-03-026, p 182). This is something that must be accomplished before this feature of the upgrade deployment is activated.

Applicant will also introduce evidence at the time of hearing to show that an amateur radio emergency communication network that operates throughout California and neighboring states would be disrupted if power was disconnected as the result of a mistake or security breach. This problem would also affect other radio emergency communication systems that serve first responders, government agencies, and the public.

This is also a situation where there should be an opt-out option to prevent those possibilities.

II INTEREST IN PG&E'S SMARTMETER PROGRAM

Applicant was not a party to either of the SmartMeter proceedings (D.06-07-027 and D.09-03-026), and was unaware until recently that there were people that suffered from EMH, and the possibility that EMF radiation and conduction from SmartMeters might contribute to their symptoms. These are things that applicant learned through conversations with experts in this field, and the scientific studies

referred to herein. This is why applicant did not participate in the proceedings earlier, and this application could not have been presented within one year of the effective dates of the decisions referred to above. However, applicant is very concerned about the health and safety issues described in these pleadings, the lack of an opting-out option, and the need for testing of the power shutoff capability of the SmartMeters.

III PUBLIC INTEREST

Applicant believes the Commission has a duty to supervise and do all things necessary to resolve the matters set forth in this application (see Public Utilities Code §701). Even the Commission recognizes this obligation: "*We remain vigilant regarding new scientific research on EMF, and are prepared to open a new rulemaking if warranted*" (see D.06-01-042, p 17).

In addition, the California Supreme Court has determined that: ". . . *the commission's powers are not limited to those expressly conferred on it: The Legislature further authorizes the commission 'to do all things whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient' in the exercise of its jurisdiction over public utilities. Accordingly, 'the commission's authority has been liberally construed'*" (see *Consumers Lobby Against Monopolies v. Public Utilities Commission* (1979) 25 Cal.3d891, 905 [160 Cal.Rptr. 124, 603 p.2d 41]).

IV COMPLIANCE WITH ARTICLE 2

Pursuant to Rule 2.1(a), the exact name of the applicant is:

Wilner & Associates
P.O. Box 2340
Novato, CA 94948-2340
415-898-1200

Wilner & Associates is a sole-proprietorship owned and operated by David L. Wilner.

Pursuant to Rule 2.1(b), the person to whom correspondence or communications in regard to the application should be addressed is:

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

Wilner & Associates consents to e-mail service of documents.

Pursuant to Rule 2.1(c), applicant proposes that the application be categorized as a ratesetting proceeding. Although applicant does not request any immediate change to PG&E gas or electric rates, the proceeding could result in the adoption of new tariff provisions. According to the definitions set forth in Rule 1.3(a)(d)(e), applicant does not believe that the application should be categorized as an adjudicatory or quasi-legislative proceeding.

Applicant requests that the Commission convene a prehearing conference and evidentiary hearings. The issues to be considered are set forth in Section V herein. Applicant proposes the following procedural schedule, but suggests that final scheduling details be determined at the prehearing conference:

December 29, 2010	Applicant files application
December 31, 2010	Application appears on Daily Calendar
January 31, 2011	Protests and responses due
February 7, 2011	Prehearing conference
March 9, 2011	Applicant testimony served
March 24, 2011	Responsive testimony served
April 25-28, 2011	Evidentiary hearings
May 31, 2011	Opening briefs filed
June 15, 2011	Reply briefs filed
July 15, 2011	Proposed decision filed and served
August 15, 2011	Opening comments filed
August 30, 2011	Reply comments filed
September 9, 2011	Decision appears on Commission agenda

V RELIEF

1. Pursuant to Section 761 of the Public Utilities Code, the Commission, after a hearing in this matter, determine that PG&E's rules and practices relating to the health and safety issues raised in this application are inadequate;
2. Pursuant to Section 761 of the Public Utilities Code, the Commission, after a hearing, establishes rules allowing subscribers to opt-out of the SmartMeter program with good cause;
3. Pursuant to Section 768 of the Public Utilities Code, the Commission require PG&E to perform laboratory and infield tests to ensure that the shutoff feature of the SmartMeters is not inadvertently activated or subject to a security breach;
4. The Commission convene a public workshop to establish an acceptable opt-out option concerning the SmartMeter program;
5. The Commission order PG&E to provide notice of the approved opt-out option by bill insert to its subscribers; and
6. Such other and further relief as the Commission may deem appropriate.

WHEREFORE, for the reasons stated herein, the relief sought by applicant in this matter should be granted by the Commission.

Dated December 29, 2010, at Novato, California.

Respectfully submitted,

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

DECLARATION OF DAVID L. WILNER

I, David L. Wilner declare as follows:

1. I reside in Novato, California. My mailing address is: P.O. Box 2340, Novato, CA 94948-2340.
2. I am a residential customer of Pacific Gas and Electric ("PG&E"). The utility is installing both gas and electric SmartMeters in Marin County, where I live, and throughout its service territory in California.
3. I am the owner of Wilner & Associates, a consultant firm that assists clients in identifying Electromagnetic Fields ("EMF") in their environment, and makes recommendations for mitigation measures.
4. I am aware of many scientific studies concerning health and safety issues relating to EMFs, and believe they are relevant to the deployment of PG&E's SmartMeters, and concern by the public that they may be harmful to people that suffer from Electromagnetic Hypersensitivity ("EMH").
5. I am also aware of newspaper stories, town hall meetings, and protests where there have been allegations that the SmartMeters cause adverse health effects, among other things.
6. I have received military training for the installation, calibration, and repair of radar and radio communication systems as well as safety issues relating to EMF and Radio Frequency radiation.
7. I operate the California Amateur Radio Service net that provides emergency communication services throughout California and into neighboring states. We conduct emergency drills regularly. I am also a member of the American Radio Relay League (ARRL), and have held my FCC license for almost 50 years.
8. I have worked as a consumer advocate in California, and represented ratepayers as well as clients before the California Public Utilities Commission in ratemaking and complaint proceedings.
9. I was unaware, until recently, that there were people that suffered from EMH, and the possibility that EMF radiation and conduction from SmartMeters might contribute to their symptoms. These are things that I learned through conversations with experts in this field, and the scientific studies referred to in this application for modification.
10. The same is true of the remote shutoff capability of the SmartMeters. I was unaware that the SmartMeters and the AMI data network were vulnerable to hackers, and that power could be shutoff inadvertently as well.

11. I believe that there is good cause for the Commission to modify the SmartMeter decisions as set forth in the relief sought in this application for modification.

12. I am familiar with the facts stated in this application for modification and my declaration, and if called as a witness, I am prepared to testify competently thereto.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Dated December 29, 2010, at Novato, California.

/s/
David L. Wilner

VERIFICATION

I, David L. Wilner, represent Wilner & Associates, and am authorized to make this verification on the behalf of the firm. The statements in the foregoing documents are true to the best of my knowledge, except for those matters that are stated on information and belief, and to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated December 29, 2010, at Novato, California.

/s/

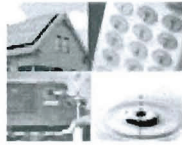
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CERTIFICATE OF SERVICE

The Commission has not created a service list for this application. As a courtesy to interested parties, I certify that I have by electronic mail this day served a true copy of the original attached "Application of Wilner & Associates for Modification of D.06-07-027 and D.09-03-026" on all parties of record in A.05-06-028 and A.07-12-009 or their attorneys of record on the attached Service List. I will mail paper copies of the pleading to Assigned Commissioner Michael Peevey, Administrative Law Judge Douglas Long, and Administrative Law Judge David Fukutome as well as any interested parties that do not have an electronic mail address on the service lists.

Dated December 29, 2010, at Novato, California.

/s/ _____
Marie A. Wilner



California Public Utilities Commission

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