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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. (U39M).

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

And Related Matters.

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

EMF SAFETY NETWORK OPENING BRIEF

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EMF SAFETY NETWORK OPENING BRIEF

1. Introduction and Summary

Pursuant to Rule 13.11 of the California Public Utility Commission (Commission or CPUC) Rules of Practice and Procedure, the EMF Safety Network (Network) submits this brief in response to “Assigned Commissioner’s Ruling Amending Scope of Proceeding to Add a Second Phase” dated June 8, 2012. During the November 2012 evidentiary hearings, Administrative Law Judge Amy Yip-Kikugawa amended the filing date for briefs to January 11, 2013, and requested briefs be arranged in three specific chapters.¹

Network recommends the Commission:

- 1) Allow residential and commercial customers for any reason to retain or restore analog meters at no cost;
- 2) Require utility company shareholders to bear financial responsibility for Smart Meter opt-out costs;
- 3) Order the utilities to refund opt-out fees already paid by individuals;
- 4) Open a CPUC proceeding, allow testimony, and hold evidentiary hearings to investigate Smart Meter health and fire safety complaints.

2. Cost and Reasonableness of Costs

All utility customers should be allowed to retain or restore the analog² utility meters at no cost to the individual. There should be no initial fees, no monthly fees, and no exit fees. Establishing a no cost opt-out will help to resolve many problems the opt-out program presents. First and foremost, it will substantially ease customer complaints. Secondly, it will eliminate the need to determine whether or not the fees are legal and/or discriminatory. Furthermore it could help the CPUC and the utilities avoid potential litigation surrounding the imposition of fees.

¹ CPUC Administrative Law Judge Amy Yip-Kikugawa, 4 RT 634: 2-13

² Exhibit EMF-1 8: 8-13 An analog meter that emits no radiofrequency radiation (RF) either wireless or unintentional radiation onto electrical wiring; Exhibit CEP-1 p.14

2.1 Easing Customer Complaints

Transcripts from the Public Participation Hearings (PPH) held between November 13th and November 20th, 2012 illustrate the outrage and frustration utility customers are feeling towards Smart Meters and being charged not to have them. Over 200 utility customers spoke to Administrative Law Judge Amy Yip-Kikugawa in five California cities.³ Twenty speakers refer to the opt-out fees as “extortion”.⁴ Other descriptions⁵ include: “a theft”, “a scam”, “un-American”, “criminal”, “tyranny”, “pay not to be harmed”, “abuse of power”, “a penalty”, “coercive”, “highway robbery”, and “an assault”. Mr. Holz who spoke in Santa Barbara stated, “*in self defense I would smash every single f***ing one of them.*”⁶ These strong words aptly illustrate the outrage many customers are feeling.

2.2 Relief From Legal Determinations

Decision 12-02-014 Conclusion of Law # 1stated: “*A residential customer should be allowed to opt-out of a wireless SmartMeter for any reason, or for no reason*”.⁷ Allowing customers to have analog meters without paying additional fees would align with and support this customer choice rationale.

The Commission should keep in mind that there are utility customers who will testify that Smart Meters are causing them medical conditions.^{8 9} Aglet director James Weil states he expects either the Commission or court orders will prohibit opt-out charges for customers with medical conditions related to radiofrequency (RF) emissions from Smart Meters.¹⁰ If the CPUC eliminates the charges there will be no need to determine

³ PPH were held in Bakersfield, Santa Barbara, San Clemente, Los Angeles and Santa Rosa RT 6-10

⁴ PPH speakers Ms. Rose, 10 RT 1105: 17-19; Ms. Feral, 10 RT 1036: 3; Mr. Horn, 10 RT 1017: 24; Ms. Lee, 10 RT 1001: 24; Mr. Bercich, 9 RT 934: 25; Mr. Frank, 9 RT 929:18; Ms. Taar, 9 RT 942:16; Ms. Homan, 9 RT 944:3; Ms. Schlicht, 9 RT 954:14; Ms. Bruce, 8 RT 848: 28; Ms. Gregory, 8 RT 851:21; Mr. Grey, 8 RT 857:14; Mr. Sosenko, 8 RT 862:19; Ms. Barton, 8 RT 861:25; Mr. McSpadden, 8 RT 872:21; Ms. Brunoehler, 8 RT 877:10; Berit Sten, 7 RT 731:13; Sasha Letterman, 7 RT 753:22; Shirley Force, 7 RT 798:27; and Veronica Haverbeck, 7 RT 811:18

⁵ Descriptions from various participants taken from PPH transcripts, 6-10 RT

⁶ PPH speaker Mr. Holz, 7 RT 759: 8-10

⁷ Exhibit EMF-1 2: 10-11, footnote 5

⁸ Exhibit EMF-1 2: 4-7, footnote 2: Network Opening Brief July 16, 2012, declarations excerpts pp. 5-11

⁹ Exhibit JJ-1 Chapter 2

¹⁰ Exhibit Aglet-1 7:16-18

whether or not PUC § 453(b)¹¹ or other California (Government Code § 11135) or Federal discrimination laws (The Americans with Disabilities Act) apply.

2.3 Avoiding Potential Litigation

It was CPUC President Michael Peevey who originally ordered PG&E to file an application¹² to charge customers for opting-out of Smart Meters, not a CPUC decision based on a proceeding where evidentiary hearings were held and the costs fully vetted prior to approval of the interim opt-out charges. Customers are now paying these charges to the utilities, even though the final decision is still pending. These interim charges should be refunded to customers.

The Division of Ratepayers Advocates (DRA) expert witness Lee-Whei Tan stated, “It is essential that the costs be just and reasonable to meet the legal requirements specified in Public Utilities (“PU”) Code §451”.¹³ This law states in relevant part, “*All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful....*”¹⁴

If the Commission does not charge individuals fees to opt-out they will avoid potential litigation related to unjust and unreasonable fees that the opt-out program presents. For example, customers should not be charged who: retained the analog meters where the utility will not incur new meter costs, and should be entitled to a credit;^{15 16} have multiple meters on one property who are being charged two, three or more times for each meter;¹⁷ and/or have dual utility companies who would be double charged to opt-out.¹⁸ In addition it could help provide relief for customers who live with other

¹¹ Exhibit EMF-1 4: 17-21 PUC §453(b) which states (in relevant part), “*No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code...*”

¹² PG&E witness Raymond Blatter, 3 RT 348: 7-11

¹³ Exhibit DRA-1 1-1: 22-23 to 1-2: 1

¹⁴ Exhibit EMF-1 3: 17-21, DRA-1, 1-2, footnote 3

¹⁵ Exhibit EMF-1 3: 5-17

¹⁶ Exhibit Aglet-1 19:15-19

¹⁷ Exhibit EMF-1 3: 24-28 to 4: 1-6

¹⁸ PG&E witness Raymond Blatter, 3 RT 352: 5-12

customers' meters or have banks of meters on or near their home.¹⁹

3. Issues related to fees and charges

The CPUC has not formally addressed in any proceeding the reason why customers are refusing Smart Meters. Customer health impacts issues have been presented to the CPUC, but these have been denied inclusion in this proceeding.²⁰

Dozens of PPH speakers told heartbreaking accounts of health problems since Smart Meter installation: headaches, tinnitus, sleep problems, heart problems, anxiety, nausea, and more. Some stated they had been forced to move to avoid neighbors Smart Meters and banks of Smart Meters. For example, Ms. Toril Jelter stated she is a board certified pediatrician and general practitioner with over thirty years experience. She said, *"when my neighbors got smart meters I developed severe tinnitus, fatigue, and neuropathy at home and at work."* She stated she had to move her home to a low RF area, and close her practice.²¹ Charging customers to pay to avoid a health and safety hazard is wrong and likely actionable.

3.1 Health and Safety Issues are a Cost

International health experts are advising the public to reduce their exposure to RF, and advising against Smart Meters.²² In May 2011, the International Agency for Research on Cancer, an arm of the World Health Organization, classified RF as a 2b carcinogen.²³ Network conducted a Smart Meter health survey in 2011 that concluded, *"Statistical testing shows the top health symptoms are positively associated with EMF Sensitivity and wireless meters on the home."* Reported health symptoms included sleep problems (49%), stress (43%), headaches (40%), ringing in the ears (38%) and heart

¹⁹ Exhibit EMF-1 3:24-27

²⁰ A.11-03-014 Scoping Memo June 8, 2012 p. 3 "Various parties argued that cost and cost allocation issues cannot be determined without considering whether the adopted analog meter opt-out option resolves the alleged health concerns raised by some parties and the public. Upon consideration of the arguments raised, I am not persuaded that it would be appropriate to expand the scope to review the alleged health impacts of smart meters."

²¹ PPH speaker Ms. Toril Jelter, 10 RT 1098

²² Exhibit EMF 1 9: 4-10 footnote 31 American Academy of Environmental Medicine calls for a halt to wireless smart meters <http://emfsafetynetwork.org/?p=6985> , Smart Meters: Correcting the Gross Misinformation <http://maisonsaine.ca/smart-meters-correcting-the-gross-misinformation/>, Health Risks Associated With SmartMeters Poki Stewart Namkung, M.D. M.P.H 2012, and Sage Reports 2011, <http://sagereports.com/smart-meter-rf/>

²³ Exhibit EMF-1 4:22-24

problems (26%).²⁴ The long term public health risk is a serious issue, considering the ubiquitous coverage of the Smart Meter mesh network, the RF from Smart Meter SMPS,²⁵ and increasing public exposure to other wireless devices, including cell phones, cordless phones, cell towers, wi-fi and other devices.

Another hazard linked to Smart Meters needing investigation is fires. Fires related to Smart Meters are reported in California, Florida, Georgia, Illinois, Maine, Pennsylvania, Texas, Australia, and Canada. Media, fire departments and customers have reported them.²⁶

At the Santa Rosa PPH Mr. Patrick Wrigley stated he was a former PG&E meter reader for nine and a half years in the Marin office when he was fired because he was not willing to be quiet about the Smart Meter problems he saw. Mr. Wrigley said, *“The fact that PG&E knows that they do catch on fire when they are remotely turned back on when a customer who is delinquent in their bill finally pays their bill. These meters catch fire. They know it, and they are covering it up.”*²⁷ Another speaker, Ms. Moskow stated, *“I had terrible electric problems in my house once the smart meter was installed, fire coming out one of the outlets, many outlets not working.”*²⁸ The Commission should investigate both the health complaints and the fire risks.

3.2 Extend Choice to Commercial Customers

Metering choice should also be extended to commercial customers. There are many reasons a commercial customer might not want Smart Meters on their business premises. The business owners or their clientele could be EMF sensitive. Firefighters sleep at their business locations. There are health care businesses, alternative doctors offices, childcare centers, health food stores and restaurants, health and wellness retreat centers, etc. Commercial customers should not have to pay fees to opt-out of Smart

²⁴ Exhibit EMF-1 4:10-16 footnote 12, <http://emfsafetynetwork.org/wp-content/uploads/2011/09/Wireless-Utility-Meter-Safety-Impacts-Survey-Results-Final.pdf>

²⁵ Exhibit EMF-1 9: 1-3 footnote 30, the Switching Mode Power Supply in the Smart Meter emits “unintentional radiation”.

²⁶ Exhibit EMF-1 9: 22-24 to 10:1-4 footnote 16, Network has complied reports of Smart Meters Fires and explosions (including PG&E meters): http://emfsafetynetwork.org/?page_id=1280

²⁷ PPH speaker Mr. Patrick Wrigley 10 RT 1024:18-28 to 1025:1-2

²⁸ PPH speaker Ms. Moskow 10 RT 1014: 5-9

Meters for all the same reasons residential customers should not be charged.²⁹

4. Cost recovery and ratemaking

Smart Meter opt-out costs should be paid by utility shareholders. Shareholders are ultimately responsible for the cost of poor administrative choices. This discipline is an essential determining factor in improving corporate performance.

4.1 Cost Allocation Principles

The DRA did not address cost allocation in their testimony.³⁰ PG&E, SCE, SDG&E, and the testimony for The Utility Reform Network (TURN) cite the cost causation principle as the criterion for determining cost allocation, which places the blame for the problem squarely on the customer. Network strongly disagrees the customer is to blame and suggests the CPUC use other principles, such as customer impact to determine allocation.

Southern California Gas (So Cal Gas) Company witness Patrick Petersilia stated, *“I have been around here a long time. I think you can find just about any set of cost allocation principles that exist under the sun having been applied”*.³¹ DRA witness Lee-Whei Tan stated there are other ratemaking principles such as rate shock and large bill impact to customers.³² PG&E witness Raymond Blatter stated rate stability was a factor in PG&E’s decision to maintain interim opt-out rates,³³ and that high impact on customers was also a cost allocation principle.³⁴

However, when witnesses were asked about customers viewing the fees as punitive, So Cal Gas witness Patrick Petersilia stated they had not discussed it;³⁵ PG&E witness Raymond Blatter said he was not aware customers viewed the fees as punitive,³⁶ as did TURN’s witness Jeffrey Nahigian.³⁷ DRA witness Lee-Whei Tan said they did

²⁹ Exhibit EMF-1 8: 15-21

³⁰ Exhibit DRA-1, 1-1: 17-19

³¹ So Cal Gas witness Patrick Petersilia, 1 RT 99: 9-15

³² DRA witness Lee-Whei Tan, 2 RT 156: 7-12

³³ PG&E witness Raymond Blatter, 3 RT 321:9-13

³⁴ PG&E witness Raymond Blatter, 3 RT 345: 4-10

³⁵ So Cal Gas witness Patrick Petersilia, 1 RT 100:21-24

³⁶ PG&E witness Raymond Blatter, 3 RT 342: 10-17

³⁷ TURN witness Jeffrey Nahigian, 3 RT 381: 15-17

“not exactly” consider customers response to individuals paying fees.³⁸

In response this question: “Do you consider it reasonable that if a Smart Meter is installed on someone’s home and they’re experiencing headaches, or sleep problems, or ringing in the ears, that that person should have to pay to not have that device on their home? PG&E witness Raymond Blatter responded, “*I think that if that customer receives a benefit of not having that meter on their home, that they should pay for that benefit or at least partially pay for it.*”³⁹

4.2 Response to Aglet’s Proposal

Aglet Consumer Alliance’s position is that customers who have medical conditions related to Smart Meters be allowed to opt-out for free, providing they verify their medical conditions, and all others pay \$30 initial fee and \$3 a month, to avoid frivolous use of resources.⁴⁰ Network disagrees with this position. No one should be charged to opt-out of a health and safety hazard, even a smaller amount like Mr. Weil suggests.

Obtaining a medical note is an expensive cost which will be a barrier for some, and possibly a new discrimination issue. Implementing a program to verify and collect these doctor’s notes will cost money. Mr. Weil’s concern with frivolity is based on his belief that if people get something for free they will waste it.⁴¹ He testified, “*If customers of water utilities don’t have meters, they have a tendency to overuse water because it doesn’t cost them anything. I consider that to be frivolous use.*”⁴² Since all electricity and gas is metered, it is not the same as unmetered water services and will not foster waste.

4.3 Why Shareholders Should be Financially Responsible

The Commission, in concert with the utilities, forced Smart Meters onto customers. There is no federal⁴³ or state law that mandates all utility customers must have

³⁸ DRA witness Lee-Whei Tan, 2 RT 159:6-10

³⁹ PG&E witness Raymond Blatter, 3 RT 346:28 to 347:1-9

⁴⁰ Exhibit Aglet-1 4:16-21

⁴¹ Aglet witness James Weil, 2 RT 203: 5-8

⁴² Aglet witness James Weil, 2 RT 203: 8-12

⁴³ PG&E witness James Meadows, 3 RT 469: 7-9

Smart Meters, or pay not to have Smart Meters.⁴⁴

Decision 09-03-026 which approved RF Smart Meters was silent on customer rights of choice; never fully vetted or disclosed the technical specifications of the RF meters; failed to file a California Environmental Quality Act (CEQA) exemption;⁴⁵ never held public participation hearings; failed to obtain ratepayers informed consent; and ignored their no and low cost EMF policy, which included RF.⁴⁶

In 2009 PG&E began receiving many complaints about Smart Meters.⁴⁷ In January of 2010 PG&E hired a public relations firm, Edelman,⁴⁸ to try to improve the Smart Meter image online and in print media. PG&E spent millions of dollars for marketing Smart Meter programs,⁴⁹ but refused to remove Smart Meters for customers with health complaints.⁵⁰ The money PG&E spent on advertising and snooping on activists⁵¹ could have been used to cover the costs to restore analog meters.

Network filed A.10-04-018 in April 2010 requesting a Smart Meter moratorium, technical RF information and health and safety evidentiary hearings. The CPUC dismissed the application and denied the rehearing request.⁵² Tens of cities and counties called for a moratorium, safety studies, an opt-out program, and/or made installation of Smart Meters illegal. Despite tremendous public opposition, PG&E continued to deploy millions of Smart Meters and scrap the analog meters.⁵³

PG&E was provided \$128.8 million in risk based allowance, included in the original Smart Meter program.⁵⁴ DRA witness Lee-Whei Tan said, *“The AMI [Smart Meter] program built in a lot of contingencies. It has almost \$200 million contingency*

⁴⁴ Exhibit EMF-1 6: 6-8

⁴⁵ PG&E witness James Meadows 3 RT 463:14-20

⁴⁶ Exhibit EMF-1 6: 9-12

⁴⁷ PG&E witness James Meadows, 3 RT 460: 9-14

⁴⁸ Exhibit EMF-1 7: 24-25 footnote 13 PG&E data Response to CPSD Dec 2010 p. 20 of 410 PG&E hired Edelman

⁴⁹ Exhibit EMF-1 7: 12-13 footnote 27: 12th Semi Annual Report, October 2012 p.11 PG&E spent 40.2 million on “SmartRate Marketing & Education and Customer Web Presentment”

⁵⁰ PG&E witness James Meadows, 3 RT 461: 21-26

⁵¹ Exhibit EMF-1 5: 8 footnote 15: I.12-04-010 Order Instituting Investigation on the Commission’s Own Motion into the Operations and Practices of Pacific Gas & Electric Company regarding Anti-Smart Meter Consumer Groups.

⁵² Exhibit EMF-1 7: 14-20

⁵³ Exhibit EMF-1 7: 24-25 PG&E Response to DRA data request DRA_003-07

⁵⁴ Exhibit EMF-1 5: 22-23 to 6:1-3

plus another \$100 million dollars that PG&E can avoid reasonableness review.”⁵⁵

If the Commission is using the “cost causation” principle for determining allocation, they should apply utility company neglect as the cause of the problem, not the individual customer. The utility company shareholders should pay for opt-out costs in order to ensure more accountability in the future.

5. Conclusion

The Commission has an opportunity to restore customer confidence. Network recommends the following: allow residential and commercial customers to retain or restore analog meters at no cost; require shareholders to bear financial responsibility for opt-out costs; order the utilities to refund interim fees already paid; and open a proceeding to investigate Smart Meter health and fire safety complaints.

Dated: January 11, 2013 at Sebastopol
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⁵⁵ DRA witness Lee-Whei Tan, 2 RT 177: 18-21