

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 07-12-009

This is the proposed decision of Administrative Law Judge (ALJ) Sullivan. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Sullivan at tjs@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ MICHELLE COOKE for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:tcg

Attachment

Decision **PROPOSED DECISION OF ALJ SULLIVAN** (Mailed 11/15/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Increase Revenue Requirements to Recover the Costs to Upgrade its SmartMeter™ Program (U39E).

Application 07-12-009
(Filed December 12, 2007)

**DECISION DENYING THE CITY AND COUNTY OF SAN FRANCISCO'S
PETITION TO MODIFY DECISION 09-03-026**

1. Summary

We deny the City and County of San Francisco's petition to modify Decision 09-03-026 because the petition fails to present new facts that justify the request to suspend Pacific Gas and Electric Company's (PG&E) program to install SmartMeters. No facts or attestations have been provided. Thus, there are no facts that show that the SmartMeters are less accurate than current meters or that the billing system is now generating fewer accurate bills.

In addition, other issues that subsequently arose in this proceeding concerning customers' complaints and potential installation costs that exceed the amount authorized are under consideration in PG&E's General Rate Case, Application 09-12-020. Outstanding issues concerning projected SmartMeter costs are the subject of a pending settlement agreement, filed on October 15, 2010, which provides for SmartMeter cost recovery and benefit recognition for the 2011 through 2013 period. In addition, the settlement also provides that Commission staff will oversee an independent audit of SmartMeter costs.

Although the Commission has not yet acted on this settlement, it is clear that issues concerning customer complaints and installation costs already have a procedural home.

In summary, we deny the petition to suspend PG&E's SmartMeter installation program because the parties have not put forth facts that justify the requested action. Since issues concerning customer service and installation costs already have procedural homes, there is no reason to continue this proceeding. Therefore, we deny the petition and close this proceeding.

2. Background and Central Issues

On June 17, 2010, Pacific Gas and Electric Company's (PG&E) petition to modify Decision (D.) 09-03-026 reopened this proceeding.¹ City and County of San Francisco (CCSF) sought "an immediate suspension of PG&E's further installation of SmartMeters until the Commission concludes its investigation into the significant problems created by PG&E's deployment of its SmartMeters."² CCSF also filed a motion for expedited treatment of its Petition.³

The Commission acted at our November 20, 2009 business meeting to initiate independent testing of PG&E's SmartMeters and related software due to public concerns raised about PG&E's deployment.⁴ This work came to a

¹ *City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* (Petition).

² Petition at 1.

³ *Motion for Expedited Treatment of the City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Deployment of SmartMeters* (Motion).

⁴ *Assigned Commissioner's Ruling Regarding the Consultant's Evaluation of PG&E's SmartMeter Program* (ACR), September 2, 2010, at 1.

conclusion, and on September 2, 2010, President Peevey issued an Assigned Commissioner's Ruling transmitting as an attachment the Commission-sponsored report titled "PG&E Advanced Metering Assessment Report" (Structure Report)⁵ to the service list in this proceeding.

On September 22, 2010, the Administrative Law Judge (ALJ) issued a ruling⁶ that denied CCSF's Motion for expedited treatment of the petition. The ALJ Ruling held that:

... the information available at this time indicate that the costs associated with a suspension of PG&E's Smart Meter installation program, in both monetary and human terms, appear to be substantial and exceed the doubtful benefits of an immediate suspension.⁷

The ALJ Ruling also quoted directly from the Structure Report, which found that:

PG&E's SmartMeters are accurately recording electric usage within acceptable CPUC [California Public Utilities Commission] tolerances, and are being accurately utilized in Customer billing.⁸

The ALJ Ruling invited comments and replies on the question, "What should the Commission do concerning the CCSF Petition in light of the Structure Report?"⁹

⁵ *Id.* at Attachment.

⁶ *Administrative Law Judge's Ruling (ALJ Ruling)*, September 22, 2010.

⁷ ALJ Ruling at 8.

⁸ Structure Report at 13, cited in ALJ Ruling at 7.

⁹ ALJ Ruling at 8.

This is now the central question in this proceeding. On this question, CCSF, Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) advocate a continuation of this proceeding to review the Structure Report and the reasonableness of PG&E's implementation of the SmartMeter Program. PG&E and The Technology Network (TechNet), on the other hand, argue for a denial of the Petition.

2.1. Procedural Background

The procedural history following the filing of the Petition is lengthy and demonstrates how events have altered the shape of the issues before the Commission.

On June 17, 2010 the Commission received CCSF's Petition, which called for a temporary suspension of the SmartMeter installation program. In addition, CCSF also filed a Motion for expedited treatment of its petition.

PG&E,¹⁰ DRA,¹¹ TURN,¹² the County of Santa Cruz,¹³ the City of Santa Cruz,¹⁴ and the Coalition of California Utility Employees (CUE)¹⁵ filed timely

¹⁰ *Pacific Gas and Electric Company's Opposition to the City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters, July 19, 2010.*

¹¹ *Response of the Division of Ratepayer Advocates to the City and County of San Francisco's Petition to Modify Decision 09-03-026 to 026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters (DRA Response), July 19, 2010.*

¹² *Response of The Utility Reform Network in Support of the CCSF Petition to Modify D.09-03-026 to Temporarily Suspend SmartMeter Installation, June 28, 2010.*

¹³ *County of Santa Cruz's Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition, June 24, 2010.*

¹⁴ *City of Santa Cruz's Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition, July 14, 2010.*

responses to the Petition. In addition, the Town of Fairfax timely filed a motion to intervene in support of CCSF.¹⁶

On July 23, 2010, filing late with the assent of the ALJ, the City of Capitola adopted all the arguments of CCSF in its Petition and Motion.¹⁷

On July 29, 2010, with the assent of the ALJ, CCSF filed a reply.¹⁸

On July 30, PG&E filed a response opposing the motion of the Town of Fairfax to intervene.¹⁹

On July 30, 2010, filing late with the assent of the ALJ, the City of Monte Sereno²⁰ and the City of Scotts Valley²¹ adopted all the arguments of CCSF in its Petition and Motion.

On August 6, 2010, an ALJ Ruling set a Prehearing Conference (PHC) for August 18, 2010 and granted the Town of Fairfax party status.²²

¹⁵ *The Coalition of California Utility Employee's Opposition to the City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters, July 19, 2010.*

¹⁶ *Motion of the Town of Fairfax to Intervene in the Proceeding in Support of the City and County of San Francisco's Petition to Modify Decision 09-03-026 (Fairfax Response).*

¹⁷ *City of Capitola's Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition, July 23, 2010.*

¹⁸ *Reply of the City and County of San Francisco to Responses to the Petition to Temporarily Suspend PG&E's Installation of SmartMeters, July 29, 2010*

¹⁹ *Pacific Gas and Electric Company's (U 39 M) Response to the Motion of the Town of Fairfax to Intervene in Support of City and County of San Francisco's Petition to Modify Decision 09-03-026, July 30, 2010.*

²⁰ *City of Monte Sereno's Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition, July 30, 2010.*

²¹ *City of Scotts Valley's Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition, July 30, 2010.*

On August 16, 2010, filing late with the assent of the ALJ, the City of Watsonville²³ adopted all the arguments of CCSF in its Petition and Motion.

In summary, as of August 18, 2010, CCSF, the Town of Fairfax, the County of Santa Cruz, the City of Santa Cruz, the City of Capitola, the City of Monte Sereno and the City of Scotts Valley presented a unified call for a suspension of the SmartMeter installation program. TURN also supported the Petition of CCSF. PG&E and CUE opposed the Petition. DRA expressed concern for the costs of either suspending or continuing with SmartMeter installation, and asked that the Commission, as it considered this matter, adopt a policy to minimize costs.²⁴

At the PHC, the ALJ stated that there were two issues before the Commission: 1) what to do regarding CCSF's request to suspend the installation of PG&E's SmartMeters immediately; and 2) how to proceed with the other issues raised in the Petition. During the course of the PHC, the ALJ ruled that PG&E must file information supporting its claim that the suspension would be costly, and set a date of August 25, 2010 for receipt of that information.²⁵ The ALJ further ruled that parties could respond to this filing no later than August 27, 2010.²⁶

²² *Administrative Law Judge's Ruling Setting Prehearing Conference, August 6, 2010.*

²³ *City of Watsonville's Response to the City and County of San Francisco's Petition to Modify Decision 09-03-026 and Motion for Expedited Treatment of the Petition, August 16, 2010.*

²⁴ DRA Response at 1.

²⁵ TR 24:15-16.

²⁶ TR 24:24-25.

PG&E filed the information ordered on August 25, 2010.²⁷

On August 27, CCSF,²⁸ CUE,²⁹ DRA³⁰ and TechNet³¹ filed comments in response to the PG&E Cost Filing.

On September 2, 2010, President Peevey issued the ACR transmitting as an attachment the Commission-sponsored report titled "PG&E Advanced Metering Assessment Report" (Structure Report).

Since the Petition had asked for a temporary suspension of meter installation until the completion of this study, the completion of the study and its release dramatically altered the shape of the issues before the Commission. On September 22, 2010, the ALJ Ruling denied the motion for expedited action and

²⁷ *Pacific Gas and Electric Company's Response in Compliance with Administrative Law Judge's Oral Ruling Requiring that PG&E Submit Data on the Estimated Potential Costs Associated with Suspension of Pacific Gas and Electric Company's SmartMeter Technology Deployment, August 25, 2010 (PG&E Cost Filing); Declaration of Stephen P. Lechner Address Costs and other Impacts Related to a Moratorium on PG&E's SmartMeter Program, August 25, 2010; and Pacific Gas and Electric Company's Motion to File Under Seal the "Confidential Version" of Data on Estimated, Potential Costs Associated with Suspension of Pacific Gas and Electric Company's SmartMeter Technology Deployment, August 25, 2010. An ALJ Ruling on September 22, 2010 placed the cost data under seal.*

²⁸ *Response of the City and County of San Francisco to Pacific Gas and Electric Company's Submission of Data on the Estimated Costs Associated with Suspension of SmartMeter Technology Deployment, August 27, 2010.*

²⁹ *The Coalition of California Utility Employees' Comments on Pacific Gas and Electric Company's Data on the Estimated Potential Costs Associated with Suspension of Pacific Gas and Electric Company's SmartMeter Technology Deployment, August 27, 2010.*

³⁰ *Comments of the Division of Ratepayer Advocates on the Data Provided by PG&E's Data on the Costs of a Temporary Suspension, August 27, 2010.*

³¹ *Comments of the Technology Network on the Potential Costs Associated with a Temporary Suspension, August 27, 2010.*

invited comments and replies on the question, “What should the Commission do concerning the CCSF Petition in light of the Structure Report?”³²

On October 15, 2010, CCSF,³³ DRA,³⁴ PG&E,³⁵ TechNet³⁶ and TURN³⁷ filed opening comments.

On October 29, 2010, DRA³⁸ and PG&E³⁹ filed replies.

2.2. Jurisdiction

The Commission’s jurisdiction over this matter is set out in the Pub. Util.

Code:

1708. The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

³² Ruling at 8.

³³ *Response of the City and County of San Francisco to the Administrative Law Judge’s Ruling of September 22, 2010 Ruling* (CCSF Comments on ALJ Ruling), October 15, 2010.

³⁴ *Comments of the Division of Ratepayer Advocates on What the Commission Should Do in Light of the Structure Group Report* (DRA Comments on ALJ Ruling), October 15, 2010.

³⁵ *Opening Comments of Pacific Gas and Electric Company in Response to Administrative Law Judge’s Ruling* (PG&E Comments on ALJ Ruling), October 15, 2010.

³⁶ *Comments of the Technology Network* (TechNet Comments on ALJ Ruling), October 15, 2010.

³⁷ *Comments of the Utility Reform Network in Response to ALJ Ruling of 9/22/20 [sic]* (TURN Comments on ALJ Ruling), October 15, 2010.

³⁸ *Reply Comments of the Division of Ratepayer Advocates on What the Commission Should Do in Light of the Structure Report* (DRA Reply Comments on ALJ Ruling), October 29, 2010.

³⁹ *Reply Comments of Pacific Gas and Electric Company in Response to Parties’ Opening Comments Submitted Pursuant to Administrative Law Judge’s Ruling Issued September 22, 2010* (PG&E Reply Comments on ALJ Ruling), October 29, 2010.

The procedures whereby the parties may petition the Commission to modify decisions are set out in the Commission's Rules of Practice and Procedure. The rule most relevant to this proceeding is Rule 16.4(b):

Rule 16.4 (b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.⁴⁰

In summary, the Commission has clear statutory authority and rules to address this matter.

3. Issues Before the Commission

The threshold issue in this proceeding is whether the Commission should continue this proceeding to review the Structure Report and investigate PG&E's SmartMeter program or deny the Petition and close this proceeding.

4. Position of Parties

The CCSF Comments on the ALJ Ruling note that the release of the Structure Report makes the "step of temporarily suspending SmartMeter installations until the Commission completed its investigations into SmartMeters"⁴¹ a "specific relief"⁴² that is "no longer available."⁴³ CCSF then

⁴⁰ State of California, Public Utilities Commission, *Rules of Practice and Procedure*, August 2009, Rule 16.4 available at http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138-15.htm#P790_188519

⁴¹ CCSF Comments on ALJ Ruling at 1.

⁴² *Id.* at 2.

argues that the “Commission should now use this proceeding to review the Structure Group Report.”⁴⁴ Specifically, CCSF argues that “The Commission cannot reasonably rely on findings in the report unless it reviews the report”⁴⁵ and further contends that the “Commission does not typically accept the findings presented in a report by any party ...”⁴⁶ CCSF then cites a series of examples in which the Commission solicited public input before accepting the results of a study.

In addition, CCSF expresses support for the position that “the Commission must closely examine whether or not PG&E’s SmartMeter deployment costs are reasonable in light of PG&E’s history of problems.”⁴⁷

DRA recommends that the Commission continue its review of PG&E’s SmartMeter program and recommends that the Commission take four steps to complete its investigation:

1. Examine the Structure Report,⁴⁸
2. Determine whether known problems have been addressed satisfactorily,⁴⁹
3. Determine whether there are any additional problems or concerns that need to be addressed,⁵⁰ and

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 5.

⁴⁸ DRA Comments on ALJ Ruling at 2.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 4.

4. Issue a decision setting forth the Commission's findings, and what, if any, further action needs to be taken to ensure that the SmartMeter program delivers the benefits promised, and does not harm customers.⁵¹

DRA further argues:

Some months ago, the Commission announced it would engage an independent consultant to investigate the reasons for the extraordinary number of customer complaints it has received concerning PG&E's SmartMeter program. Now that the Report has been made available, the Commission must evaluate it (in a public proceeding, with participation of interested parties), decide whether to adopt the Report's findings, and obtain any additional information that may be required to answer all questions pertinent to the Commission's investigation. The Commission should then issue a decision setting forth its findings and conclusions, and ordering any further action it deems necessary.⁵²

TURN also supports the continuation of this proceeding. TURN argues:

The Commission should allow parties time to review the Structure Report, obtain any data used by Structure in doing its evaluation, and (if necessary) provide testimony concerning any analytical weaknesses or problems with the Report. TURN suggests that a prehearing conference be held to ascertain the intent of any party to conduct such analysis and determine a proper procedural schedule.⁵³

PG&E, in contrast, argues that the Commission should deny CCSF's Petition because "the Structure Report expressly refutes the allegations of flawed technology that formed the basis of CCSF's Petition."⁵⁴ PG&E further asserts that

⁵¹ *Id.*

⁵² *Id.* at 4-5.

⁵³ TURN Comments on ALJ Ruling.

⁵⁴ PG&E Comments on ALJ Ruling at 4.

CCSF's argument that the Commission does not ordinarily accept findings in a submitted report "is misplaced."⁵⁵ PG&E states that the "unique circumstances around the Structure Report distinguish it from the examples that CCSF cites as precedent ..."⁵⁶ PG&E contends that opening a review of the Structure Report and continuing this proceeding "is beyond the relief requested in CCSF's Petition ..."⁵⁷ Finally, PG&E concludes by arguing that "neither CCSF nor any other parties submitting comments have satisfied the standard required for the Commission to grant CCSF's petition to modify."⁵⁸ PG&E contends that "neither CCSF nor any other party has identified material new facts that would support suspension of deployment."⁵⁹

Like PG&E, TechNet continues to oppose the Petition. TechNet argues that the "Structure Report repudiates the CCSF Petition's core premise concerning the accuracy of PG&E's SmartMeters."⁶⁰ TechNet argues further that "suspending the deployment of SmartMeters would not serve any valid purpose."⁶¹ TechNet argues further that:

... the Commission should remove the threat of a suspension and thereby free up PG&E's employees, the employees of PG&E's SmartMeter vendors, Commission staff members, and well-intentioned consumer advocates to focus on what they do

⁵⁵ PG&E Reply Comments on ALJ Ruling at 3.

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 4.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* at 5.

⁶⁰ TechNet Comments on ALJ Ruling at 2.

⁶¹ *Id.*

best, namely identifying and resolving any real but resolvable issues that may arise in connection with this technologically innovative and logistically challenging infrastructure upgrade project.⁶²

In summary, CCSF, DRA and TURN argue for this proceeding to continue with a review of the Structure Report, while PG&E and TechNet oppose CCSF's Petition.

5. Discussion and Analysis

We deny CCSF's Petition and close this proceeding because neither CCSF nor any other party has identified material new facts that would support suspension of the SmartMeter program, and because issues concerning customer service and program costs have other procedural homes.

Specifically, the Petition fails to meet Rule 16.4(b), which requires, as noted above, that:

Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The Petition offers no facts concerning the inaccuracy of the SmartMeters or PG&E's billing system.⁶³

⁶² *Id.* at 3-4.

⁶³ We note that the Structure Report has examined the issues of meter and billing system accuracy and found that both are accurate. We do not, however, need to take this report into evidence or rely on it because in a petition to modify, it is the petitioner who must provide the new facts that justify granting the petition. As noted above, CCSF has not done so.

Furthermore, PG&E's General Rate Case already offers a procedural home in which the Commission can consider the issues concerning the costs of the program and customer service issues that CCSF, DRA, and TURN would have us address in this proceeding. In particular, D.09-03-026, the decision that the Petition asks us to modify, states in Ordering Paragraph 6:

6. In its next general rate case (GRC) for test year 2011, PG&E shall make an affirmative showing that it has avoided double recovery of any authorized SmartMeter Upgrade costs, and that any requested costs in its 2011 GRC are consistent with the limits of recovery adopted in this decision.⁶⁴

Consistent with this directive, SmartMeter issues are being addressed in PG&E's test year 2011 General Rate Case, Application (A.) 09-12-020, which is nearing conclusion. A pending settlement agreement, filed on October 15, 2010, addresses SmartMeter cost recovery and benefit recognition for the 2011 through 2013 period. It also proposes that Commission staff oversee an independent audit of SmartMeter costs.

Thus, both customer service and cost issues associated with the SmartMeter program already have a procedural home and current issues and future costs are the subject of a pending settlement now under consideration in A.09-12-020.

6. Conclusion

In summary, CCSF has not provided new facts that would warrant the suspension of PG&E's SmartMeter program. Issues concerning service quality

⁶⁴ D.09-03-026, Ordering Paragraph 6 at 196.

and program costs already have procedural homes. This proceeding should be closed.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

8. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Timothy Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. *The City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* (Petition) provides no new facts to support its request for suspension of the SmartMeter installation program.

2. PG&E's General Rate Case, A.09-12-020, is addressing PG&E's SmartMeter Program.

3. General Rate Cases typically address customer service issues.

Conclusions of Law

1. The Petition should be denied since no new facts justify modification of D.09-03-026.

2. The Petition fails to conform to Rule 16.4(b) of the Commission's Rules of Practice and Procedure.

3. D.09-03-026 deferred cost issues associated with PG&E's SmartMeter installation program to PG&E's General Rate Case.

O R D E R

IT IS ORDERED that:

1. *The City and County of San Francisco's Petition to Modify Decision 09-03-026 to Temporarily Suspend Pacific Gas and Electric Company's Installation of SmartMeters* is denied.

2. Application 07-12-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated November 15, 2010, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

N O T I C E

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