

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)

**COMMENT BY Alameda County Residents Concerned About Smart Meters
(ACRCASM) ON COMMISSIONER PEEVEY'S PROPOSED DECISION
OF NOVEMBER 22, 2011, ON APPLICATION A.11-03-014.**

This comment submitted by

Alameda County Residents Concerned
About Smart Meters (ACRCASM)
PO Box 11842
Berkeley, CA 94712
510-845-8634

Correspondence or communications in regard to this comment should be addressed to:

Steve Martinot
Recording Secretary
Alameda County Residents Concerned
About Smart Meters (ACRCASM)
PO Box 11842
Berkeley, CA 94712
510-845-8634
martinot4@gmail.com

ACRCASM consents to e-mail service of documents.

Dated December 12, 2011

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Table of contents

1. Introduction	3
2. Summary	3
3. Discussion	4
3.1. Public Utility Code 745	4
3.2. Popular Demand and the "opt-out" Procedure	7
3.3. The Application that Supersedes Mr. Peevey's Plan	9
3.4. Some Collateral Legalities to Mr. Peevey's Plan	10
4. Conclusion	12
Authorities Cited	13
Findings of Fact	13
Conclusions of Law	14

1. Introduction

Pursuant to Rule 14.3 and Rule 1.13 of the California Public Utilities Commission's Rules of Practice and Procedure, Alameda County Residents Concerned About Smart Meters (ACRCASM) hereby comments on the proposed decision of November 22, 2011, served by Commissioner Peevey, concerning Pacific Gas and Electric's (PGE) application for an opt-out option to its Smartmeter program.

2. Summary

The most generous term we can use to describe Commissioner Peevey's "proposed decision" on A.11-03-014 is that it is shameful. It is disrespectful of the people, autocratic, and in violation of due process and of the very procedures over which Mr. Peevey presides.

In the social domain, it is an act of disrespect and dishonesty. Mr. Peevey acts as if the arguments and evidence raised contesting the content of PGE's proposal, contesting the glib assurances of industry and government that Smartmeters are safe, that they produce no adverse effects on peoples health and well-being, are of no weight or consequence. He acts as if applications contesting the very foundation of the Smartmeter program as a whole are due no respect. He acts as if he can bar or withhold discussion and hearings, even when those are required by law.

In legal terms, Mr. Peevey has acted autocratically within the procedures of the PUC itself to suppress issues, to deny and to abrogate due process, and to irrationally and unreasonably impose his will on what has become a very controversial social issue. Indeed, the very notion of "opting out" is a contested term. Arguments have been raised that the law already establishes an opt-in procedure, rendering an opt-out procedure superfluous. Arguments have been raised that an opt-out procedure implies a mandate, from which it provides exemption, where none exists, and against which no evidence of a legislated mandate has been offered. Various alternatives to the Smartmeter have been offered and simply denied without hearings or cross-examination of the industry or the suppliers. The costs reported by the utilities have been contested (see ACRCASM ex parte communication of Nov. 20, 2011). Mr. Peevey has denied motions of

substance in opposition to PGE's proposal without discussion or argument, without hearings or the ability to cross-examine or bring in testimony. He has ignored superseding applications (for instance, A.11-07-009) that would, if decided affirmatively, nullify the original authorization of the Smartmeter program, and thus render PGE's proposal and Mr. Peevey's decision both moot.

In political terms, Mr. Peevey has placed the PUC in an outrageously autocratic and unconscionable position with respect to the people of California. On p. 20 of his "proposed decision" (PD), he says:

"We remind parties that while we believe that residential customers should be offered an opportunity to opt-out of receiving a wireless SmartMeter, this does not mean that customers electing this option would not be subject to ongoing state energy objectives."

"Subject to state objectives"??? Excuse me!! Since when has the state of California become a totalitarian state, that it makes its decisions about things, to which the people of the state have simply to "socialize themselves"? If the PUC, as an agent of the state, looks at the people as its "subjects", then it is guilty of autocracy of the most egregious kind.

Fortunately, the law is more democratic, and to the extent the law more truly represents the state's objectives, it reveals Mr. Peevey's dereliction in saying what he says here. The law permits opting out without penalty, and without the implicit opprobrium of not "subjecting oneself" to "state objectives."

The most generous change to this proposal that can be recommended is that it be nullified totally in the interest of democracy and justice.

3. Discussion

3.1 Mr. Peevey's Plan vs. the meaning of the Public Utility Law

Public Utility Law section 745(b) states:

(b) The commission shall not require or permit an electrical corporation to do any of the following:

(1) Employ mandatory or default time-variant pricing, with or without bill protection, for any residential customer prior to

January 1, 2013.

(2) Employ mandatory or default time-variant pricing, without bill protection, for residential customers prior to January 1, 2014.

(3) Employ mandatory or default real-time pricing, without bill protection, for residential customers prior to January 1, 2020.

Last time I looked, we were considerably prior to the date, Jan. 1, 2013. Clearly, residential accounts are to be guarded against the imposition of time-variant pricing (Time-Of-Use, or TOU), without certain protections, until Jan. 1, 2014. The law provides that those who want TOU pricing can get it (745(c)). But for the next two years, it is by law optional, and thus remains within an "opt-in" paradigm. If TOU is optional (a wholly democratic approach), then the infrastructural foundation for it, namely AMI and the Smartmeter, is also optional. And this accords with the federal Energy Act of 2005, which simply says that utility companies are to make AMI technology available to those who want it. The real democratic content of California's law is revealed in section 745(d), where it says, referring to all times subsequent to Jan. 1, 2014, "Residential customers have the option to not receive service pursuant to time-variant pricing and incur no additional charges as a result of the exercise of that option." We are still presented with an opt-in procedure, with the implication that AMI (Smartmeter) infrastructural technology is superfluous and dispensable.

How does Mr. Peevey represent this law? He says, in his PD, on page 21, "To ensure that the electric noncommunicating meter is able to take advantage of smart grid benefits in the future, it must be capable of capturing interval energy consumption data." Here he is speaking about his choice of PGE's radio-off option, which will cost customers drastic increases in their monthly bills, rather than simply leaving or having left the analog meter in place for those who did not wish to avail themselves of TOU technology. And this is what his PD is all about, imposing this choice. But he has invoked no legitimating authority other than his own prior decisions for taking it upon himself to "ensure" that something will be the case, despite the fact that the state does not mandate it. He says that all meters, from "Smart" to radio-off to other non-communicating meters "**must be capable**" of TOU pricing. If the law does not say this, then who is he to say it?

But there is sleight of hand here (albeit consistent with Mr. Peevey's general disrespect for the people). He is assuming the necessity for smart grid infrastructural technology in order that TOU pricing might simply be available, as a capacity or capability in the future. Thus, he moves from recognizing availability (of TOU pricing) to proclaiming a universal necessity for its infrastructural foundation. His reasoning consists in falsely mandating (without legitimacy) the installation of AMI technology, in alleged pursuit of "ensuring" an availability (of TOU) for those who might desire it through universal installation of the technology.

From the customers perspective, it works the opposite way. If the customer wishes to refuse TOU pricing, and maintain the old (present) form of pricing, then the technology required for TOU pricing will not be needed and can be dispensed with, without incurring additional charges for doing so.

In effect, he transforms an "availability" into a mandate, and he does so without foundation, without legitimacy, without due process, and without granting the customers a modicum of respect, which would mean giving their perspective and testimony equal weight.

The customer's point of view is of no consequence for Mr. Peevey, and has been locked out of the process through his refusal of hearings and real examination of the issues and controversies raised by this program (See ACRCASM ex parte communication of June 27, 2011, in A.11-03-014). The customer is simply an object to be universalized in the interest of an industry (he actually quotes and accepts PGE's unfounded statement (p10) that California has mandated TOU rates for all customers), despite the fact that the PUC was empanelled precisely to defend the rights and well-being of the customer.

If the Commissioners vote to affirm Mr. Peevey's PD, they become complicit in this autocracy, in his unreasonable sleight of hand, and in his disrespect for the people of California. Hopefully, the irony of a small elite group voting "democratically" to deny democratic process to the people of California will not be lost on them.

One could only add that, given the actual opt-in essence of the law, Mr. Peevey's original call for an opt-out option in March of 2011, PGE's response to that call with an

opt-out proposal (the present procedure), and Mr. Peevey's valorization of that opt-out option with this present PD, are nothing but a form of social control that has no statutory or socially legitimate basis. Any political process that denies the people real and non-discriminatory options (and to charge for opting out is economically discriminatory) is nothing but a form of social control.

We must recommend, as an alternative to this PD, that the Commissioners vote against the proposal in the interests of justice and democracy, thereby nullifying it. Because this PD represents the thrust and theme of PGE's original proposal, which also gives no credence or care to the customer's point of view, we recommend that the proposal, A.11-03-014, be denied. And because of Mr. Peevey's demonstrated anti-democratic stance, we recommend that he resign immediately from any government position in which he might have any authority.

3.2 How Mr. Peevey's Plan rationalizes its social control

Mr. Peevey rationalizes this exercise of social control through a hypocritical sense of responding to popular demand. He claims that the opt-out option was proposed by himself in response to people's complaints. By March of 2011, a fairly large movement in opposition to the Smartmeter program had grown up in California. Its primary focus at that time was the fact that the Smartmeter had adverse health effects and impacts on large numbers of people. The general content of that popular opposition to which Mr. Peevey claimed to be responding was a call for a moratorium on installation until the technology could be modified and proven safe for people (as opposed to requiring the people to prove the technology unsafe). People cried out for the ability to opt-out of the program for health reasons, and 47 cities and counties responded by opposing the Smartmeter program in ordinance and resolution. And we who protested against this opt-out proposal all, by and large, demanded that the health issue, along with hearings on it, be included in the Scoping Memo. (See PHC transcript of May 6, 2011, and Application A.11-07-009)

But Mr. Peevey himself barred consideration of the health issues from that Scoping Memo, issued May 25, 2011. And he has consistently refused to recognize the health issue as relevant to this proceeding, or to allow hearings or testimony on the

health issues in any of these proceedings, though it is relevant to every aspect of the Smartmeter program. And this is especially deleterious in light of the World Health Organization's recent report (by the International Agency for Research on Cancer) which classified microwave radiation as a Class 2B carcinogen.

That was the way Mr. Peevey responded to popular complaints and demands, by squelching them and by denying them due process. When he then claims to speak in their name, he is guilty of rank hypocrisy.

As a further hypocritical cover for his exclusion of the health issue from consideration in this PD, he opportunistically misuses the role of the FCC. He says, "the FCC also regulates human exposure to RF emissions in order to protect public health and safety." (p. 16) The FCC does no such thing. This is a mendacious reference to the FCC. The FCC regulates technological devices, and sets maxima for RF emissions, assuming that this will have no effect on health and safety. But its standards are not set on the basis of the real experience of human beings with the technology it regulates. It simply surmises, as a result of theory and industry testing, that the standards it sets are safe for humans. It does not "regulate human exposure." If the FCC were concerned with protecting health and safety, it would pay attention to what happens to people in the real world from exposure to RF emissions, and modify its regulations to accord with their testimony. But it doesn't.

Mr. Peevey's derogation in this respect is to have substituted statements made by the FCC on a theoretical basis for the actual experience on the ground of real people subjected to the Smartmeter program, and whose testimony Mr. Peevey has consistently excluded from this proceeding. He glibly refers to "FCC allowable" transmissions (p15-16) instead of allowing real testimony of people adversely affected by it. The fact that something may be "FCC allowable" is immaterial if the technology harms people. If it is harming people, then that is what has to be addressed.

It is not that we have not tried to get this issue included. The fact of adverse health impacts has been addressed in most of our filings, in both PHCs, and in the workshops, along with calls for hearings; but all to no avail. In on-going PUC public comment sessions, more and more people appear and complain about health effects, but still the issue is barred from these proceedings by Mr. Peevey. The demand from

the people of California has been precisely for the opportunity to testify in official hearings, that might have some affect on changing FCC standards – also to no avail. Due process for the people of California has been denied.

Given the fact of denial of due process, and the hypocritical manner in which Mr. Peevey rationalizes it, we can only recommend that this PD be nullified by the Commission, and that Mr. Peevey himself resign as a corrupting influence.

3.3 The Application that Supersedes Mr. Peevey's Plan

Mr. Peevey is even content to deny the logic of legitimacy in his own proceedings. There is a superseding application (A.11-07-009), filed July 18, 2011, which argues cogently for modification of the original Smartmeter authorization on constitutional grounds and various other legal grounds, including PGE's violation of its easement (defined in Public Utility Law section 701), and the PUC's violation of the statutory limitations placed on its powers (*Koponen vs. PGE*, 2008). This application calls for a revisiting and revision of that original authorization in light of the real experience of people under the effects of that program, and for hearings on that real experience from people affected by the Smartmeter program. Since the current proposal for an "opt-out" option gets its legitimacy from that original authorization, if that original authorization has lost legitimacy, then so would this dependent proposal. Thus, this application (A.11-07-009) must take precedence over continued address to the current ("opt-out") proposal. In pushing ahead with his PD, Mr. Peevey engages in a breach of legal logic, and thus a totally unreasonable procedure.

In a motion filed on Sept. 20, 2011, in this proceeding, we repeated the arguments from that other application (A.11-07-009), and argued cogently that PGE's opt-out proposal had both lost legitimacy because the original authorization for the Smartmeter program could no longer be considered valid in light of real experience, and that the issue of an "opt-out" was a false issue because it assumed a mandate that did not exist. In addition, the PUC does not have the authority to render any such a program (such as the Smartmeter) mandatory, because it does not have the authority to legislate the relation between a utility and its customers, other than in setting rates. Only the legislature has that power. The PUC's task is to regulate the utilities. These are all

issues that require attention, in light of the points made above. Our motion (under A.11-03-014) of Sept. 20, 2011, is one of the motions that Mr. Peevey simply denies out of hand in his PD.

We need not reiterate or rehearse the arguments contained in that application and in our motion. All parties to this procedure are aware of them, given their being on file. What is at stake here is Mr. Peevey's cavalier attitude, by which he breaks the logic of the procedures he governs, and disrespects the thinking of the people, those who have protested the program, those who have sought to get hearings on the real issues, and those who have been demanding democratic process in the unfolding of this controversial program. To simply ignore them, as well as to ignore the superseding application and motions filed in this proceeding, denying them out of hand without comment or discussion, without hearings or testimony, without examination or cross-examination, are all acts of egregious disrespect. What these actions on Mr. Peevey's part amount to is a silencing of the people, and of their thinking, and a corruption of the very procedures over which he presides. Such actions, the primary characteristic of autocracy, have no place in a democratic framework.

We therefore recommend, in the interests of democracy and justice, that Mr. Peevey's proposed decision be nullified by the Commission, and that Mr. Peevey himself be removed from office for having violated his oath of office, and for having besmirched the name of the California Public Utilities Commission. It goes without saying that this should be accompanied by the immediate denial of PGE's proposal, A.11-03-014.

3.4. Some Criminal Effects of Mr. Peevey's Plan

The opt-out option that Mr. Peevey is fostering in his PD is extortionary in those cases where no permission or consent was given for Smartmeter installation. If PGE can approach customers saying, "we will install something on your house that is possibly injurious or harmful to you or your family, and if you don't want us to do that, you will have to pay us money," it is literally running a protection racket. And it is a protection racket, also known as extortion, that is being advanced by Mr. Peevey's PD.

There are laws against extortion, and it is generally considered a felony. In valorizing such a procedure, Mr. Peevey is actually advocating for the commission of a crime.

There is a second level of criminality in his PD, that of fraud. Suppose a customer decided to opt out under the terms of Mr. Peevey's PD. The cost of site visits to read the meter, after a "non-communicating" meter had been installed, would be added to the bill. This is contained in the \$15 a month increase that the PD proposes. And it was contained in PGE's schedule of costs for its opt-out procedure. But the costs of a meter reader have always been contained in the utility bill. Years before the project to replace the analog meters was thought of, the utility's customers have been paying a tariff for electricity that includes the cost of a meter reader. For those who have now had a Smartmeter installed, there is no longer any need for a meter reader. Yet there has been no decrease in their charges resulting from this fact, the fact that a meter reader no longer has to make a site visit. Those customers with a Smartmeter are therefore still paying for a meter reader even though they no longer need one. If PGE had been fair, their billing charges to customers would have been diminished by the cost of those site visits. For the PUC to now determine that PGE can charge customers who opt out an additional cost for a site-visiting meter reader (PD, p. 30) will mean that they will be paying double for the meter reader, since they will be paying for both the pre-AMI "legacy" site-visit charges and the new opt-out site-visit charges. This is not only in violation of the intent of the statute, that people be able to opt out without additional charges, but it is a case of fraud, of double billing, in violation of the law. Evidently it is for this reason that Peevey has cancelled all further hearings and testimony on PGE's proposal as "unnecessary." That Mr. Peevey can actually include this in his PD suggests that he has no qualms about expressing criminal intent.

Criminality, hypocrisy, the rejection of due process, the acceptance of anti-democratic principle, and the silencing of the people are all intimately woven into this PD. Should the Commission see fit to affirm it, then that becomes their nature as well, the character that they themselves and the government agency in which they function will have attained. That would truly be shameful.

We recommend that Mr. Peevey's PD be nullified, and that the underlying proposal A.11-03-014 be denied. We also recommend that Mr. Peevey be removed

from office (or induced to resign) as a corrupting influence, as one who clearly has expressed criminal intent by advancing, aiding and abetting the efforts of PGE to act in an extortionary manner toward the people of California, as well as for himself engaging in the promotion of a criminal plan to defraud the people of California through double billing of their utility costs. We further recommend that Mr. Peevey surrender himself to the state's Attorney General to be prosecuted for conspiracy to commit the aforementioned crimes.

4. Conclusion

The improprieties, absence of due process, and flaunting of law implicit and explicit in Mr. Peevey's PD will negate any respect due the PUC in the eyes of the people of California, should it be passed. Those who are adversely affected by this Smartmeter program will have no option or alternative but to engage in other forms of action against the utilities that impose this unwanted technology on them, and perhaps even against the technology itself. Because the PUC will have abrogated its responsibility to the people of this state, in refusing to defend them against a technology with adverse health effects, it leaves the people in the position of having to defend themselves. Whatever ensues in the near future on this score will be on the PUC's head for its abrogation of responsibility, should it pass this PD. To the extent the PUC ultimately acts in an irresponsible and criminal manner, it will have no complaint to make about the character of any outcome on the part of the people in response.

Authorities cited:

Commissioner Peevey's "proposed decision" of Nov. 20, 2011, on A.11-03-014. Public Utility Code, Section 701. Public Utility Code, Section 745. California State Constitution, Article 1, Section 1. PUC Rules and Regulations. Scoping Memo of May 25, 2011 for A.11-03-014. Application A.11-07-009, an application for the modification of the original authorization of the Smartmeter program, filed July 18, 2011, by Alameda County Residents Concerned About Smartmeters (ACRCASM). A.11-03-014 and the protests and motion filed therewith, in particular, ACRCASM's motion of Sept. 20, 2011.

Findings of Fact.

1- In his PD, Mr. Peevey has fully demonstrated his autocratic tendencies and anti-democratic attitudes, and thus his unfitness for any official position of responsibility in a republican form of government such as the state of California.

2- In his reading of Public Utility Code 745, Mr. Peevey has demonstrated his willingness to distort his reading of the law for purposes other than the safety and security of the people of California.

3- In his cavalier denial of the many motions contesting PGE's proposal, Mr. Peevey has shown himself willing to silence both the people and the parties to this proceeding, in autocratic pursuance of interests other than the safety and security of the people of California.

4- In advocating for PGE's proposal, Mr. Peevey has shown himself to be of criminal intent, defending and fostering PGE's proposed "protection racket."

5- In advocating for PGE's proposal, Mr. Peevey has shown himself willing to be an accomplice in an extortionary scheme, and hence guilty of criminal conspiracy.

6- In advocating that PGE be able to double bill its customers with respect to meter reader site visits, Mr. Peevey has shown both contempt for the people and criminal intent.

Conclusions of Law.

1- This PD cannot be permitted to pass, insofar as it is a document advocating certain criminal intent and criminal procedures, namely, extortion and the defrauding utility customers through double billing.

2- Given the fact that this PD reflects the fundamental thrust of PGE's opt-out proposal, then that proposal as well must be understood as rife with criminal intent, and must be denied in the interests of justice and democracy for the people of California.

3- Having derogated and abrogated the responsibility given him by the people of California, and thereby having violated his oath of office, Mr. Peevey has no legitimate option but to resign from the Commission.

4- Having shown himself capable of conspiracy to violate the law, Mr. Peevey must surrender himself to the state's Attorney General for indictment under the state's conspiracy statutes.

* * *

Dated December 12, 2011, at Berkeley, California.

/s/ Steve Martinot

Steve Martinot
Recording Secretary
Alameda County Residents
Concerned About Smart Meters
P.O. Box 11842
Berkeley, CA 19712
510-845-8634
Martinot4@gmail.com

VERIFICATION

I, Steve Martinot, represent Alameda County Residents Concerned About Smartmeters, and am authorized as its Recording Secretary to make this verification on the organization's behalf. I declare under penalty of perjury that the statements in the foregoing document are true and correct to the best of my knowledge and belief.

Dated December 12, 2011, at Berkeley, California.

/s/ Steve Martinot
Steve Martinot