

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)

**COMMENTS OF AGLET CONSUMER ALLIANCE
ON PROPOSED DECISION OF COMMISSIONER PEEVEY**

December 12, 2011

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, Aglet Consumer Alliance (Aglet) submits these opening comments on the proposed decision (PD) of Assigned Commissioner Michael Peevey (Agenda ID #10870) in the application of Pacific Gas and Electric Company (PG&E) for approval of changes to its Smart Meter program. The requested changes would allow residential customers to "opt out" of the program in order to reduce radio frequency (RF) emissions on their premises. PG&E requests authority to recover \$84.4 million of associated revenue requirements during the years 2012 and 2013.

Opening comments are due Monday, December 12, 2011. Aglet will file this pleading electronically on the due date.

If adopted, the PD would approve – with modifications – PG&E's proposal to continue installation of Smart Meters at every customer location but turn off RF emissions from the meter if the customer is willing to pay an initial charge and a monthly charge in order to opt out.

1. Proposed Decision Does Not Address the Real Problem

The PD notes the contention of many parties that "the radio off option would not address the concerns raised by customers regarding the effect of RF emissions on health." (PD, p. 10; see also p. 12, and Finding of Fact 5, p. 40.) Sadly, the PD does not address stakeholder concerns fairly, but sidesteps health issues by moving them outside the scope of the proceeding. (PD, p. 16.) Ultimately, the PD responds to health concerns by concluding that "the alleged effect of RF emissions on health is not material to the resolution of this application." (PD, p. 17.) Health impacts of RF emissions are central to customer concerns about Smart Meters. That conclusion constitutes factual and legal error because is not true and it fails to address the Commission's core mission to promote safe, reliable service at reasonable rates.

The PD punts all RF health issues to the Federal Communications Commission (FCC), which has established RF emission standards based only on

thermal effects. (PD, Finding of Fact 6, p. 40.) The active parties to this proceeding have shown that thermal standards are inadequate, and that the FCC has deflected customer concerns about Smart Meter emissions back to state public utilities commissions. There is no credible showing in this proceeding that the health impacts of RF emissions are limited to thermal effects. In order to protect the public interest in safe utility service, the Commission should convene hearings on health issues related to Smart Meter emissions.

The PD also fails to address the important issue of cumulative impacts of RF emissions from multiple meters, for example banks of meters at apartment buildings. Such impacts should be included in the scope of evidentiary hearings.

2. Proposed Decision Relies on “Evidence” That Is Untested

The PD commits legal error by applying different standards to information provided by PG&E and by customers. The PD accepts PG&E’s information without comprehensive review and without any opportunity for testing by opposing interests. For example, the PD finds, “PG&E provided cost information for the radio out, analog meter and wired smart meter opt-out options” (PD, Finding of Fact 10, p. 40.) The PD then relies on that information to determine that “there is little difference in cost between the various non-communicating opt-out options.” (PD, p. 26.) The PD presents PG&E revenue requirements per opt out customer equal to \$416 for the analog meter option, \$411 for the radio out option, and \$402 for the radio off option. (PD, Table 2, p. 25.) The numbers are taken from PG&E’s response to a ruling by Administrative Law Judge Yip-Kikugawa asking for cost information. (PG&E additional information, October 28, 2011, Summary of Results.) No other party had an opportunity to test the validity of PG&E’s assumptions or calculations.

On the other hand, the PD simply ignores important documents and data on RF health impacts presented by customers. Such disparate treatment of utility and customer showings shows unreasonable bias by Commissioner Peevey.

The information and calculations on which the PD relies are untested and half baked. Again, the Commission should convene evidentiary hearings on relevant factual issues. Customers have been asking for such hearings since the inception of the proceeding. (For example, see Aglet protest to the application, April 25, 2011, p. 4, and protest of EMF Safety Network, same date, p. 8.) The PD concludes, "No hearings were necessary as there were no disputed factual issues material to the resolution of this application." (PD, Conclusion of Law 23, p. 42.) The conclusion is simply wrong.

3. PG&E's Cost Analysis Is Defective

The PD attempts to draw two opposing conclusions based on the same facts. On one hand, the PD would order memorandum account treatment of PG&E revenue requirements because there are "significant cost uncertainties associated with providing an opt-out option." (PD, Conclusion of Law 12, p. 41.) PG&E admits that "significant cost uncertainty exists." (PG&E additional information, October 28, 2011, p. 1.) On the other hand, the PD relies on PG&E's cost estimates to determine that "there is little difference in cost between the various non-communicating opt-out options." (PD, p. 26.)

Aglet believes that PG&E's calculation are defective in a way that disadvantages the analog meter option. PG&E includes in cost estimates for the analog meter option a cost of \$51.24 for each new mechanical meter. Installation of the analog meter is incremental to a base case of installation of Smart Meters for all customers. Throughout PG&E's process of installing Smart Meters the utility or its contractors have scrapped existing analog meters, whether they were old or new. PG&E's calculations for opting out by installing new analog meters seem to make the same assumption – that existing Smart Meters will be scrapped. The assumption is unreasonable and contrary to sound management. Under the analog meter option, PG&E should retain the replaced Smart Meters and return them to inventory for use by other customers. For purposes of the cost estimates in the PD, PG&E should have included in the analog meter option a credit to reflect the

value of the retained Smart Meter. The record in the proceeding does not include the value of retained meters, but for illustrative purposes Aglet will assume that each meter is worth about \$200. Reducing that amount by 15% to reflect restocking costs, Aglet calculates that PG&E's cost estimates (per opt out customer) for the analog meter option should be reduced by roughly \$170. Considering that the PD relies on unit revenue requirements of \$416 for the analog meter option, \$411 for the radio out option, and \$402 for the radio off option, a \$170 (40%) reduction in unit revenue requirements for the analog meter option is a material change to the facts upon which the PD and the Commission would rely.

Previous to this pleading Aglet had no opportunity to bring this technical error to the Commission's attention. The Commission should convene hearings on net costs of the analog meter option.

4. Proposed Initial and Monthly Charges Are Too High

For non-CARE customers, PG&E proposes two alternatives for charges to opt out: a \$135 initial charge plus \$20 per month, or a \$270 initial charge plus \$14 per month. For non-CARE customers, the PD would authorize an initial charge of \$90 plus \$15 per month. Aglet appreciates the determination in the PD, "We agree with Aglet that the costs for the opt-out option should not be solely the responsibility of just those electing to opt-out." (PD, p. 31.) However, Aglet believes that as a policy matter the PD does not go far enough. Individual PG&E customers will make decisions to opt out, but those customers never asked for Smart Meters and they did not cause the RF emission hazards that led to this application.

The Commission should authorize opt out charges that are only large enough to discourage frivolous opting out. Aglet suggests an initial charge of \$30 plus \$3 per month. Authorization of low opt out charges will promote public confidence that the Commission cares about customer safety. The Commission should consider assigning a portion of opt out costs to shareholders because customers are not responsible for introduction of RF health hazards.

5. Energy Consumption Data Are Not Needed for Every Customer

The PD wrongly finds, “Interval energy consumption data is critical to the Commission’s policies to implement a demand response program and TOU rates.” (PD, Finding of Fact 8, p. 40.) Aglet agrees that compiling interval consumption data is generally useful to PG&E and other utilities, but collection of data from every single residential customer is not necessary to reach the Commission’s policy goals. PG&E anticipates that only a small percentage of its customers will opt out of Smart Meters. (PG&E estimates 145,800 opt out customers, out of roughly 5 million customers overall.) Common sense should inform us that omission of data from a limited subset of customers will not be critical in any way. PG&E can and should inform customers that opting out of Smart Meters will inhibit their access to time-of-use rates, but informed customers can make their own choices about the balance of costs and benefits of Smart Meters. It makes no sense to force customers to prepare for TOU rates that have an uncertain future.

The PD would require the meter industry to produce meters that collect interval consumption data even if PG&E turns off the radio in the Smart Meter. (PD, pp. 2, 21.) There is no justification for such an order. Requiring a new metering technology to enable collection of unneeded data is a bad idea. Aglet expects that PG&E have more to say on this issue.

In sum, requiring the collection of interval consumption data from all customers is a poor basis for excluding the analog meter option now before the Commission.

6. Memorandum Accounts Are Acceptable

The PD appropriately denies PG&E’s request for two-way balancing account treatment of opt out costs and revenues, in part to allow review of PG&E’s costs prior to rate recovery. (PD p. 44, Ordering Paragraph 2.e; the ordering paragraph is apparently mislabeled as Paragraph 2.4.) Aglet supports creation of memorandum accounts subject to later reasonableness review. However, Aglet opposes the PD’s

reliance on ERRA proceedings to accomplish the needed review. Considering the uncertainty of program costs, the scope and timing of ERRA proceedings, and PG&E's incentive to inflate costs and thereby discourage customers to opt out, the Commission should amend the PD require PG&E to file an application for rate recovery of opt out costs recorded in the memorandum accounts.

7. Conclusion

The Commission should reject the PD because it is premature and is not supported by credible evidence. The Commission should convene evidentiary hearings on opt out policy and technical issues.

* * *

Dated December 12, 2011, at Novato, California.

/s/

James Weil

**APPENDIX:
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Findings of Fact

6. ~~The FCC has authority over technical aspects of radio communications and regulates standards on human exposure to RF emissions in order to protect public health and safety~~ consider only thermal effects and might not be adequate to protect ratepayers against RF emissions from Smart Meters.

8. Collection of interval energy consumption data from every PG&E customer is not critical to the Commission's policies to implement a demand response program and TOU rates.

10. PG&E provided cost information for the radio out, analog meter and wired smart meter opt-out/options in response to an ALJ Ruling. However, parties have not had a fair opportunity to test that information or make their own showings.

12. The record in this proceeding is inadequate to authorize a Smart Meter opt out program for PG&E.

Conclusions of Law

~~2. D.10-12-001 determined that PG&E's Smart Meter technology complies with FCC requirements.~~

5. Allowing residential customers an opportunity to opt out of receiving a wireless Smart Meter ~~does not mean that customers electing this option would not be subject to ongoing state energy objectives~~ would be sound public policy.

6. It is not important that the selected opt-out option has the capability for every residential customer to take advantage of smart grid benefits in the future.

~~8. It is appropriate to adopt a non-communicating meter as the opt-out option.~~

~~9. The non-communicating meter (radio off or radio out) should have the capability of capturing interval energy consumption data by January 1, 2014.~~

~~10. PG&E's proposed radio off opt-out option is reasonable only if it will allow PG&E to collect interval data and use this data for billing purpose as of January 1, 2014.~~

~~11. It would not be reasonable to allow the opt-out option to be exercised by local entities and communities.~~

16. It would be reasonable to have a portion of the opt-out costs allocated to all residential customers.

21. The September 21, 2011 Assigned Commissioner's Ruling directing the utilities to allow residential customers to be placed on a delay list should ~~no longer be applicable for PG&E~~ remain in effect.

23. ~~No hearings were necessary as there were no~~ There remain disputed factual issues material to the resolution of this application.

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