

**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)

Comments of the Ecological Options Network, EON

on

**PROPOSED DECISION OF COMMISSIONER PEEVEY
DECISION MODIFYING PACIFIC GAS AND ELECTRIC COMPANY'S
SMARTMETER PROGRAM TO INCLUDE AN OPT-OUT OPTION**

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Summary of EON Comments

The Proposed Ruling:

Presents a false deadline for mandating choice of meters

Fails to address disputed factual issues and interrupts CPUC's own process

'Radio-Off' option ignores other radiofrequency radiation emission sources from 'smart' meters

Proposed fee is not 'just and reasonable' as required by CPUC code

The scope of this decision-making must be widened to include health, safety, security, privacy and environmental issues

Opt-Out decision must be deferred pending future developments

**EON – Ecological Options Network
COMMENTS and DISCUSSION**

Introduction

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, The Ecological Options Network (EON submits these opening comments on the proposed decision (PD) of Commissioner Peevey in the application of Pacific Gas and Electric Company (PG&E) for approval of modifications to its Smart Meter program. The due date for opening comments is Monday, December 12, 2011. EON will file this pleading electronically on the due date.

The PD, if approved by the Commission, would grant a modified version of the PG&E Smart Meter program to include an opt-out option. In compliance with Rule 14.3(c), these comments focus on factual, legal and technical errors in the PD.

Background

On March 24, 2011, PG&E filed an application requesting Commission approval of Modifications to its Smart Meter Program, Application 11-03-014. On April 14, 2011, the Commission appointed Judge Yip-Kikugawa to the case and two pre-hearing conferences were held, followed by one workshop with only IOUs and their witnesses answering questions. Commissioner Peevey issued a PD ordering an opt out with only a radio-off digital meter as an option. A preliminary fee for opting out is proposed but PG&E is to provide more information on costs of the opt out program later and rates would be adjusted. Analogs were ruled out. Customers are to pay an initial fee and a monthly charge for opting out.

Overview

EON appreciates this opportunity to provide comments the Proposed Decision of Commissioner Peevey Modifying Pacific Gas And Electric Company’s Smartmeter Program To Include An Opt-Out Option. ((Mailed 11/22/2011 - Agenda ID #10870)

EON submits that the proposed decision is premature, unlawful and unreasonable. Customers should be allowed to retain their analog meters or have them replaced at no additional charge, at least until the date that the law states that the decision whether to accept time variant pricing must be made by residents, in January 2014.

The proceeding on the opt-out question itself is incomplete and should be extended to allow those filing protests to bring their expert witnesses to testify and answer questions regarding the huge implications to health, security, privacy, safety and accuracy of the proposed 'smart' meters. Commissioner Peevey acknowledges that the technology is not available currently to implement time variant pricing and also that true costs of opting out are not known at this time. 'Smart' meters are a flawed technology that have disrupted the lives of many thousands. The CPUC does not have the authority by law to force them on customers now or ever and is overstepping its authority to allege the power to override local governments rulings in opposition to forced installation.

Discussion

1.a) The proposed decision presents a false deadline for mandating choice of meters.

The proposed decision by Commissioner Peevey is premature. By law, customers do not have to decide until Jan. 2014 whether or not to opt out of time variant pricing.

Customers should be allowed to have analog meters at least until they are required by law to choose whether they will use time variant pricing on Jan. 1, 2014.

For example from page 21 of the PD:

To ensure that the electric non-communicating meter is able to take advantage of smart grid benefits in the future, it must be capable of capturing interval energy consumption data. While this capability is not needed at this time, *it must be available by January 1, 2014*. We find PG&E's proposed radio off opt-out option to be reasonable only if it will allow PG&E to collect interval data and use this data for billing purposes by that date. [emphasis added - Pg. 21]

The Proposed Decision does not accurately represent the relevant code;

Pursuant to Pub. Util. Code § 745(b)(2) an electrical corporation may employ mandatory or default time-variant pricing, without bill protection, for residential customers after January 1, 2014. [footnote #47, pg 21]

The relevant parts of the code read:

Public Utilities Code section 745. (d) On and after January 1, 2014, the commission shall only approve an electrical corporation's use of default time-variant pricing in a manner consistent with the other provisions of this part, *if all of the following conditions have been met:*

(1) 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.... [emphasis added]

The law states time-variant cannot be mandatory or by default, but must be offered to residential customers as an option.

SB 695, signed by the Governor on October 11, 2009 and PUC Code 745 (b)(2) and (3) state that the Commission shall not require or permit an electrical corporation to employ mandatory or default time-variant pricing without bill protection for residential customers prior to January 1, 2014 or employ mandatory or default real-time pricing, without bill protection for residential customers prior to January 1, 2020.

Both Public Utility Code and California state law state that:

- The individual residential customer's decision as to whether or not to opt for 'time-of-use' metering is meant to be totally voluntary on the basis of informed consent, and, in any case, does not need to be made until Jan. 2014
- There is no legal requirement that such a customer have a meter capable of capturing time variant data already in place by that date since the residential customer may at that time opt out.
- Unnecessary costs to PG&E will occur from rushing to install unwanted meters that will ultimately be rejected.
- Customers should not be forced to pay for PG&E's mistake.

SB 695 clearly 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.

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

(c) The commission may, at any time, authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing and to participate in other demand response programs.

(d) On and after January 1, 2014, the commission shall only approve an electrical corporation's use of default time-variant pricing in a manner consistent with the other provisions of this part, if all of the following conditions have been met:

(1) 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. Prohibited charges include, but are not limited to, administrative fees for switching away from time-variant pricing, hedging premiums that exceed any actual costs of hedging, and more than a proportional share of any discounts or other incentives paid to customers to increase participation in time-variant pricing. This prohibition on additional charges is not intended to ensure that a customer will necessarily experience a lower total bill as a result of the exercise of the option to not receive service pursuant to a time-variant rate schedule.”

Therefore, all customers who choose to have analog meters are allowed by law to do so by the intent of the law that repeatedly states that no mandatory or default time variant pricing be employed for residential customers prior to January 1, 2020.

SEC. 6. Section 745 is added to the Public Utilities Code, to read:

745. Section 745

(c) The commission may, at any time, authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing and to participate in other demand response programs.

(d) On and after January 1, 2014, the commission shall only approve an electrical corporation's use of default time-variant pricing in a manner consistent with the other provisions of this part, if all of the following conditions have been met:

(1) **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.** Prohibited charges include, but are not limited to, administrative fees for switching away from time-variant pricing, hedging premiums that exceed any actual costs of hedging, and more than a proportional share of any discounts or other incentives paid to customers to increase participation in time-variant pricing. This prohibition on additional charges is not intended to ensure that a customer will necessarily experience a lower total bill as a result of the exercise of the option to not receive service pursuant to a time-variant rate schedule.

According to Federal law (Energy Policy Act of 2005) advanced metering is to be made available to those who want it. There is no mandate to force customers to allow installation of 'smart' meters on their homes. The only field in which the CPUC has regulatory authority with respect to customers is in the setting of rates. It cannot force ratepayers to accept devices for automated metering.

1.b) Over 25% of PG&E's customer base does not want forced 'smart' meter installation.

The California Constitution protects the rights to California residents to health and safety, which elected local officials are authorized to protect. This is why 10 counties and 36 cities and towns have responded to their constituents' pleas to enact ordinances and moratoria against the forced installation of 'smart' meters. The total California population represented in this way on the local level is 2,695,947. That means that at least over 25% of PG&E's customer base of approximately 10 million customers objects to being forced to install these meters.

That Commissioner Peevey disregards the concerns of over 25% of PG&E's customer base, as well as many thousands of health complaints, explains the deep mistrust and

disgust that the public holds for both the CPUC and PG&E.

Time variant pricing has been studied and analyzed by consumer experts. The National Association of State Utility Consumer Advocates, AARP, Public Citizen, Consumer Union, and the National Consumer Law Center have all expressed concern that time variant pricing will cause undue hardship on ratepayers who cannot avoid energy use at times with higher charges.

1.c) This proposed decision fails to address disputed factual issues and interrupts CPUC's own incomplete proceeding.

Some of the issues not addressed are: health and safety complaints, accuracy complaints, privacy, personal and national security concerns caused by the use of wireless meters, the assertion of authority over local municipalities right to protect their constituents' health and safety and to enforce their own laws governing franchises to utilities.

The proposed decision – based on a previously-scheduled timeline suggested by PG&E for Jan 15, 2011 – truncates an incomplete proceeding in mid-process with an arbitrary ruling not based on science, law or fact.

Finding of Law contention 23, that “No hearings were necessary as there were no disputed factual issues material to the resolution of this application” is inaccurate on its face. While the utilities presented their case in a workshop, Protestants have not yet had the opportunity to present their own workshop, question experts or witnesses, nor to continue their process of discovery. New information was gathered by Judge Yip-Kikugawa but protestors were not allowed to question or test the evidence presented by the utility.

2) 'Radio-Off' Option Ignores Other Radiofrequency Radiation Transmissions

The proposed 'Radio-off' option fails to address at least three other sources of electromagnetic pollution caused by 'smart' meter components – namely high frequency

transients propagated throughout the residential circuit wiring by the switching mode power supply (SMPS) and the digital clock, and electro-magnetic pollution propagated by neighboring ‘smart’ meters in the local ‘mesh network.’ All these sources are measurable and intense in their effects both on customers and the environment. This is tantamount to CPUC and PG&E forcing residents to be constantly smothered in a haze of engine exhaust, which is classified as a class 2b carcinogen just as the radiofrequency radiation is, by the International Agency for Research on Cancer (IARC). IARC is a committee of the World Health Organization.

3) Proposed fee is not ‘just and reasonable’ as required by CPUC code

-‘Smart’ meter deployment is an egregiously undemocratic and technologically flawed, bad management decision the cost of which should be born by the IOUs which made it.

-Spreading the costs of individual customer opt-outs across the entire customer base is neither justified nor reasonable.

CALIFORNIA CODES, PUBLIC UTILITIES CODE SECTION 451:

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.

4) The Scope of This Decision-Making Must be Widened

The assertion that despite massive numbers of public reports of serious health effects from ‘smart’ meter electro-magnetic exposure, that consideration of the current science concerning proven negative human and environmental impacts is excluded from the scope of this ruling is nothing less than an abdication of CPUC’s public mission. The

scope of the proceeding must be expanded in order for its findings to be legitimate and credible.

5) Opt-Out Decision Must be Deferred Pending Future Developments

- The ALJ proceeding before Judge Amy Yip-Kikugawa should be allowed to continue
- Further installation of wireless ‘smart’ meters should be suspended until public hearings are held airing all current scientific data on human and environmental health and until safety and technological security impacts are presented by internationally recognized authorities.

Appendix

Findings of Fact

- There remain many unresolved issues due to the fact that only PG&E has been able to present at a workshop. Critical issues that have bearing on the resolution of this highly contentious public health and democracy crisis have been ignored in the proceeding.
- ‘Radio-Off’ option does not solve the health problem because it does not eliminate the many thousands of other radiofrequency radiation transmissions daily from each meter, in addition to the multiplication of those transmissions from neighboring meters in a mesh network or in a bank of meters.

Conclusions of Law

- The law states time-variant pricing cannot be mandatory or by default, but must be offered to residential customers as an option, with no fees for those choosing to opt out. Time variant pricing may not be offered prior to January 1, 2014, though time of use is offered currently.
- Customers should be allowed to have analog meters replaced or to retain them until they are required by law to choose in Jan. 2014. They must be allowed to retain them at that point.
- Local governments must be allowed to protect their constituents health and safety by city-wide and county-wide decisions to bar forced installation of ‘smart’ meters, since the power of CPUC extends only to rate-setting.
- Proposed fee is not ‘just and reasonable’ as required by CPUC code.

Dated: December 12, 2011

Respectfully Submitted,

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