

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND ELECTRIC
COMPANY 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 THE COUNTY OF LAKE TOWARDS PROPOSED DECISION
MODIFYING PACIFIC GAS AND ELECTRIC COMPANY'S SMARTMETER
PROGRAM TO INCLUDE AN OPT-OUT OPTION**

ANITA L. GRANT (Bar # 144603)
County Counsel
Lloyd C. Guintivano (Bar # 242944)
Deputy County Counsel
255 N. Forbes Street
Lakeport, CA 95453
Telephone (707) 263-2321
Facsimile (707) 263-0702
Attorneys for the County of Lake

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the County of Lake ("County") hereby submits its comments to Commissioner Peevey's proposed Decision Modifying Pacific Gas and Electric Company's SmartMeter program To Include An Opt-Out Option ("Proposed Decision") filed on November 22, 2011. Pursuant to Rule 14.3(a), comments to this Proposed Decision are due Monday, December 12, 2011; thus, this filing is timely.

I. BACKGROUND

On March 24, 2011, Pacific Gas and Electric Company ("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 ordered a preliminary determination that the Application belongs in a ratesetting category and a hearing is needed. After two (2) prehearing conferences and a workshop, the Commission issued a proposed decision authorizing the opt-out option consisting of a non-communicating digital electric and / or gas meter. In particular, the Commission concluded the following:

1. Pacific Gas and Electric Company's (PG&E) SmartMeter Program is modified to include an option for residential customers who do not wish to have a wireless SmartMeter installed at their location to have a non-communicating meter. This option must be capable of collecting interval energy consumption data to allow PG&E to use for billing purposes by January 1, 2014.
2. Within 15 days of the effective date of this order, Pacific Gas and Electric Company (PG&E) shall file a Tier 1 advice letter in compliance with General Order 96-B. The advice letter shall be served on the service list in Application 11-03-014. The

advice letter shall include tariff sheets to modify PG&E's SmartMeter Program to include an opt-out option for customers who do not wish to have a wireless SmartMeter installed at their location and to implement a SmartMeter Opt-Out Tariff (SMOOT). The Advice Letter filing shall:

- a. Identify the non-communicating electric and gas meters (radio-off or radio out) to be offered as the opt-out option to residential customers. PG&E shall include affidavits by both the meter manufacturer selected to provide the opt-out option and the head of PG&E's SmartMeter Program that the selected non-communicating opt-out option for the electric SmartMeter will be capable of collecting interval energy consumption data and allowing PG&E to use it for billing purposes by January 1, 2014.
- b. Establish procedures for residential customers to select the option to have a non-communicating meter if they do not wish to have a wireless SmartMeter.
- c. Establish procedures to inform customers currently on the delay list that a SmartMeter opt-out option is available and that the customer will be scheduled to receive a wireless SmartMeter unless the customer elects to exercise the opt-out option.
- d. Adopt the following fees for residential customers selecting the opt-out option:

For Non-CARE and Non-FERA Customers:

Initial Fee \$90.00

Monthly Charge \$11.00/month

For CARE and FERA Customers:

Initial Fee \$0

Monthly Charge \$5.00/month

4. Establish new two-way electric and gas Modified SmartMeter Memorandum Accounts to track revenues and costs associated with providing the SmartMeter opt-out option. Recovery of the net costs shall be through PG&E's annual ERRA proceedings.
3. The September 21, 2011 Assigned Commissioner's Ruling directing the utilities to allow residential customers who had not yet received a wireless SmartMeter to retain their analog meter and to be placed on a delay list shall no longer be in effect for Pacific Gas and Electric Company.
4. Pacific Gas and Electric Company shall comply with the guidelines stated in Section 8 of this decision.
5. By March 31, 2014, Pacific Gas and Electric Company (PG&E) shall file a Tier 3 advice letter in compliance with General Order 96-B. The advice letter shall be served on the service list in Application 11-03-014. The advice letter filing shall provide information on the actual revenues collected and costs incurred to provide the opt-out option between January 1, 2012 and December 31, 2013 as compared to the estimated costs and revenue requirement contained in this application. The advice letter shall include:
 1. The costs associated with the initial costs to install a non-communicating meter, the monthly charges and other costs (e.g., network capital costs,

information technology costs).

2. The number of customers that have selected the opt-out option.
3. Revenues collected from customers, separated by type of charge (i.e., initial fee, monthly charge or exit fee).
4. A breakdown of what portion of revenues was collected from customers selecting the opt-out option and what portion of revenues was collected from all residential ratepayers.
6. All motions not yet ruled on are denied.
7. No evidentiary hearings are necessary.
8. Application 11-03-014 is closed.

II. COMMENTS

While the County agrees with some of the findings made by the Commission, the County disagrees with the Commission's decision as to the health, privacy, security, and environmental impacts of SmartMeters, and the fees imposed by the selected opt-out option.

A. The Commission Should Reconsider the Health, Privacy, Security, and Environmental Impacts of Smart Meters.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as a necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. Public Utilities Code Section 451.

A January 1, 2011 study by Sage Associates concluded that contrary to the findings of

past studies on the health effects of Smart Meters, FCC compliance violations are likely to occur under widespread conditions of installation and operation of Smart Meters and collector meters in California. Sage Associates Environmental Consultants, *Assessment of Radiofrequency Microwave Radiation from Smart Meters* (January 1, 2011), at page 50;

http://sagereports.com/smart-meter-rf/docs/Smart-Meter_Report.B-Tables.pdf. The study also recognized that

[p]eople who are afforded special protection under the federal Americans with Disabilities Act are not sufficiently acknowledged nor protected in the installation of Smart Meters. People who have medical and/or metal implants or other conditions rendering them vulnerable to health risks at lower levels than FCC [Federal Communications Commission] RF [i.e. radiofrequency radiation] limits may be particularly at risk. This is also likely to hold true for other subgroups, like children and people who are ill or taking medications, or are elderly, for they have different reactions to pulsed RF.

...

In summary, no positive assertion of safety can be made by the FCC, nor relied upon by the CPUC, with respect to pulsed RF when exposures are chronic and occur in the general population. Indiscriminate exposure to environmentally ubiquitous pulsed RF from the rollout of millions of new RF sources (smart meters) will mean far greater general population exposures, and potential health consequences. Uncertainties about the existing RF environment (how much RF exposure already exists), what kind of interior reflective environments exist (reflection factor), how interior space is utilized near walls), and other characteristics of residents (age, medical condition, medical implants, relative health, reliance on critical care equipment that may be subject to electronic interference, etc) and unrestrained access to areas of property where meter is located all argue for caution.³

Sage Associates Environmental Consultants, *Assessment of Radiofrequency Microwave Radiation from Smart Meters* (January 1, 2011), at pages 50-55; http://sagereports.com/smart-meter-rf/docs/Smart-Meter_Report.B-Tables.pdf. The Division of Ratepayer Advocates also recognized this study in its January 31, 2011 report and recommended that the Commission address health risk issues raised by the Sage Associates as well as the other health risk factors

not addressed by the California Council on Science and Technology. Division of Ratepayer Advocates (January 31, 2011), *Report on "Health Impacts of Radio Frequencies for Smart Meters"* at pages 1-3.

The policy provisions of the California Environmental Quality Act (Public Resources Code §§ 21000 and 21001) apply to rate proceedings, and the public utilities Commission will consider potential environmental impact in rate matters. *In re Environmental Impact Reports* (1973) 75 Cal.P.U.C. 133. It is the policy of the state to

- (b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.
- ...
- (d) Ensure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions.
- ...
- (f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.
- (g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

Public Resources Code Sections 21001(b), (d), (f) and (g).

The County respectfully disagrees with the Commission's findings regarding radiofrequency ("RF") emissions. Proposed Decision, at 15-17. Contrary to the Commission's findings, the report by Sage & Associates cited above revealed that RF emissions are in violation of FCC regulations, contrary to the past studies conducted on the health effects of SmartMeters. Rejecting the findings of the Sage & Associates report as "not material to the resolution of this application" without further consideration, environmental review, or evidentiary hearings

effectively disregards the health risks faced by many Californians “consistent with the provision of a decent home and suitable living environment for every Californian.” Proposed Decision, at 17; Public Resources Code Section 21001(d). The Commission has a responsibility to all consumers, and it has recognized that some ratepayers with health concerns need an opt-out provision to the Smart Meter program. While the Commission should be credited for allowing an opt-out option for ratepayers who have health issues against SmartMeters, imposing the costs to these ratepayers effectively sends a message that a ratepayer needs to have the financial capability to address a health issue created by PG&E. These health concerns, along with the lack of environmental impact recognition by PG&E in any of its SmartMeter applications and the pending unresolved privacy and security issues discussed in the Commission’s June 24, 2010 Decision 100-60-47, all show the inadequacy of PG&E’s installation of Smart Meters and its associated fee structures.

B. In the Alternative, the Opt-Out Costs Should not be Allocated to All Residential Ratepayers.

“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.” Public Utilities Code Section 451.

The Commission is specifically required to fix just, reasonable, and sufficient rates and classifications for any public utility if after a hearing it finds that they are insufficient, unlawful,

unjust, unreasonable, discriminatory, or preferential. Public Utilities Code Section 728.

The Commission has a mandate to protect the public interest in its oversight of utility actions and ensure that customers receive adequate service at just and reasonable rates. *PG&E Corp. v.*

Public Utilities Commission (2004) 118 Cal.App.4th 1174, 1198 [13 Cal.Rptr.3d 630, 647-648].

The California Alternate Rates for Energy (CARE) program is a legislatively-mandated, financial assistance program to help low-income electric and gas customers pay for their utility bills. *See* Public Utilities Code Sections 739.1 and 739.2.

In order to meet legitimate needs of electric and gas customers who are unable to pay their electric and gas bills and who satisfy eligibility criteria for assistance, recognizing that electricity is a basic necessity, and that all residents of the state should be able to afford essential electricity and gas supplies, the Commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures.

Public Utilities Code Section 382(b).

While the County respects and appreciates the Commission's decision to lower the fees initially proposed by PG&E in its Application and incorporate FERA customers in the discounted rates, its decision "to have "a portion of the opt-out costs allocated to all residential ratepayers" is inconsistent with the standards set forth under Public Utilities Code Section 728. Imposing a portion of the costs to the ratepayers who did not elect to utilize the opt-out option ("non opt-out ratepayers") provides an advantage to the ratepayers who utilize the opt-out options (opt-out ratepayers") by having the non opt-out ratepayers pay for a benefit to be received solely by the opt-out ratepayers. This results in the non opt-out ratepayers subsidizing the opt-out ratepayers for a portion of the opt-out costs. The Commission should avoid this type of preferential treatment in favor of the opt-out ratepayers, and PG&E should be responsible for the portion of the costs not covered by the opt-out ratepayers' fees.

III. CONCLUSION

For the reasons discussed above, County requests that the Commission reconsider the arguments raised by the protesters in this Application as to the health, privacy, security, and environmental effects of SmartMeters. In the alternative, any fee structure should impose the fees on the opt-out ratepayers as outlined in the Proposed Order, with PG&E bearing a portion of the costs for the opt-out not covered by these fees. It would not be reasonable to have a portion of the opt-out costs to all residential ratepayers.

Respectfully submitted,
ANITA L. GRANT
County Counsel

By: /s/ LLOYD C. GUINTIVANO
Lloyd C. Guintivano
Deputy County Counsel
Attorney for the County of Lake
255 North Forbes Street
Lakeport, CA 95453
Telephone: (707) 263-2321
Facsimile: (707) 263-0702

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APPENDIX

Proposed Findings of Fact:

1. PG&E was directed by Commissioner Peevey to submit a proposal that would allow some form of opt-out for PG&E customers who did not wish to have a smart meter with RF transmission.
2. PG&E proposes that the SmartMeter Program be modified to provide residential customers the choice to disable (turn off) the radio inside their gas and/or electric meters.
3. The four possible alternatives for an opt-out option are: (1) SmartMeter with the radio transmission turned off; (2) digital meter with no radio installed; (3) analog meter; and (4) wired smart meter with wired transmission capability.
4. A non-communicating opt-out option would disable certain electric SmartMeter functions.
5. Customers seeking an opt-out option have expressed concerns that a radiooff option would not reduce the level of RF emissions.
6. The FCC has authority over technical aspects of radio communications and regulates human exposure to RF emissions in order to protect public health and safety.
7. Analog meters are unable to track interval energy consumption data.
8. Interval energy consumption data is critical to the Commission's policies to implement a demand response program and TOU rates.
9. PG&E's application provided cost estimates for the radio-off option.
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.
11. PG&E's cost estimates ~~are based on its best efforts and actual costs~~ may be significantly different [from actual costs](#).

Proposed Conclusions of Law:

1. A residential customer should be allowed to opt out of a wireless SmartMeter for any reason, or for no reason.

~~2. D.10-12-001 determined that PG&E's SmartMeter technology complies with FCC requirements. Further review and hearings are necessary to consider the health, privacy, security, and environmental impacts of SmartMeters.~~

~~3. Lake has not presented convincing arguments why the installation of SmartMeters is subject to environmental review under CEQA.~~

4. The best opt-out option to be adopted must balance the concerns expressed by customers against California's overall energy policy.

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

6. It is important that the selected opt-out option has the capability to take advantage of smart grid benefits in the future.

7. The wired smart meter opt-out option is not cost effective compared to the other options.

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.~~

12. Due to the significant cost uncertainties associated with providing an optout option, it would be premature to make any determination concerning the reasonableness of PG&E's revenue requirements.

~~13. Since PG&E's implementation of the SmartMeter Program is consistent with the requirements of D.06-07-027, it should be allowed to recover the costs associated with the opt-out option to the extent those costs are found to be appropriate, reasonable and not already being recovered in rates.~~

14. A residential customer selecting the opt-out option should be assessed an initial charge to install the non-communicating meter and a monthly charge.

~~15. The costs for the opt-out option should not be the sole responsibility of those customers selecting the option.~~

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

17. Any discount should be provided to customers enrolled in the CARE and FERA programs.

18. PG&E should be authorized to establish two-way electric and gas Modified SmartMeter Memorandum Accounts to track revenues and costs associated with providing the opt-out option.

19. PG&E should provide information on the revenues collected and costs incurred to provide the opt-out option after the option has been in place for a couple of years.

20. The Any modifications to the SmartMeter Program should be implemented as quickly as possible.

~~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.~~

~~22. All outstanding motions should be denied.~~

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

~~24. A.11-03-014 should be closed.~~

Proposed Revisions to Text of Decision and Order:

Delete: the paragraph beginning with "The Commission has also received . . ." on page 15 to the portion of the paragraph ending with " . . . to adversely affect the environment" on page 19.

Delete: the paragraph beginning with "We do not agree with Protestants' arguments . . ." on page 30 to the paragraph ending in " . . . all ratepayers share in a portion of the costs" in page 31.

Delete: the whole paragraph on page 33 beginning with "However, we do not agree with Lake's assertion . . ." to the end of that portion of that paragraph ending with " . . . the purpose of the low-income programs" on page 34.

Delete: Order item No. 7 on page 45.

Add Order item – Further review and hearings are necessary to allow for consideration of the January 2011 report by Sage & Associates. In the alternative, Add Order item: A portion of the opt-out costs shall be allocated to PG&E.