

# ATTACHMENT 1

**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)
Application of Utility Consumers' Action Network for Modification of Decision 07-04-043 so as to Not Force Residential Customers to Use Smart Meters.	Application 11-03-015 (Filed March 24, 2011)
Application of the Consumers Power Alliance, et al for Modification of D.08-09-039 and a Commission Order Requiring Southern California Edison Company (U338E) to File an Application For Approval of a Smart Meter Opt-Out Plan.	Application 11-07-020 (Filed July 26, 2011)

**DECLARATION OF LAWRENCE BRAGMAN IN SUPPORT OF MOTION OF COUNTY OF MARIN, TOWN OF FAIRFAX, CA, AND THE ALLIANCE FOR HUMAN AND ENVIRONMENTAL HEALTH TO REQUIRE DELAY OF FURTHER SMARTMETER INSTALLATIONS UNTIL DETERMINATION OF COMMUNITY OPT-OUT RIGHTS IN PHASE 2**

I, LAWRENCE BRAGMAN, hereby declare as follows:

1. This Declaration is made in support of, and is attached to the " Motion of County of Marin, Town of Fairfax, Ca, And The Alliance For Human And Environmental Health To Require Delay of Further SmartMeter Installations Until Determination of Community Opt-Out Rights In Phase 2" ("Motion"). I respectfully state as follows:
2. I am a member of the Town Council of the Town of Fairfax ("Fairfax"), California ("Council"), and have been a member of the Council since 2003. I have also served as

Mayor of Fairfax from 2006 to 2007 and from 2010 to 2011. I have also served on the Transportation Authority of Marin, the Marin Telecommunications Agency, the Community Media Center Marin, the Marin Energy Authority and the Ross Valley Paramedic Authority. I have been an active member of the California State Bar since 1982.

3. On behalf of Fairfax and its citizens I have actively participated in this proceeding starting with the filing on April 25, 2011, of a Protest against the PG&E Application on behalf of Fairfax, the County of Marin, and the Alliance for Human and Environmental Health. In my official capacity as either Mayor or member of the Council I have engaged in numerous communications with PG&E, and numerous communications with residents of Fairfax, concerning the subject matter of this proceeding, I am also familiar with the official actions of the Council relevant to this proceeding, as well as the actions of other governmental bodies in California relevant to this subject matter.

4. On August 4, 2010, the Fairfax Town Council unanimously enacted Urgency Ordinance No. 752, related to the subject matter of this proceeding. A true and correct copy of the ordinance was attached to the Protest as part of Attachment A.

5. Ordinance 752 summarizes the jurisdiction, powers, and responsibilities of the Town of Fairfax Council which are relevant to this proceeding, and its contents are incorporated herein by reference. The most salient sections include:

- a. The Town of Fairfax (the "Town"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection;

- b. Fairfax also retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities. Pursuant to California Public Utilities Code section 6203, the town “may in such a franchise impose such other and additional terms and conditions..., whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest.”;
- c. Public Utilities Code section 2902 reserves the Town’s right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, “such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation.”;
- d. Fairfax previously enacted a “Wireless Telecommunications Facilities” ordinance in 1999 under which require installers of wireless telecommunications devices to obtain a Use Permit from the Town and provide notice to neighboring properties of their intent to construct transmission facilities;
- e. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. SmartMeters represent a new form of telecommunications technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being

accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27.

6. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and will be installing these meters in the Town of Fairfax on or after May 1<sup>st</sup>. If Pacific Gas and Electric proceeds with installation of Smart Meters in Fairfax and other jurisdictions which support community opt out during the pendency of the hearing process, it will undermine and render moot the Commission's lawful authority to consider such a program. Alternatively, it will cause the needless expenditure of ratepayer funds to remove smart meters and replace them with analog meters if the Commission determines that ratepayers would benefit by a viable community opt out program.

7. Ordinance 752 enacted a moratorium on further installations of wireless mesh network components until August 3, 2011.

8. On June 1, 2011, the Council extended the Ordinance's effect until July 1<sup>st</sup>, 2012.

9. On February 12, 2012 the Fairfax Town Council voted unanimously to participate in and support the Petition for Community Opt Out filed with the Commission as an Ex Parte on January 27, 2012, and attached as Attachment 4 to this Motion.

10. Since that time, I have received repeated complaints from residents of both the Town of Fairfax and Marin County about getting incomplete and confusing information from PG&E when they inquire as to when Smart Meter opt out charges will be billed if

