

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

Application of PACIFIC GAS AND
ELECTRIC COMPANY for
Authority to Increase Revenue
Requirements to Recover the Costs to
Upgrade its SmartMeter™ Program
(U 39 M)

Application No. 07-12-009
(Filed December 12, 2007)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 M)
RESPONSE TO THE MOTION OF THE TOWN OF FAIRFAX TO INTERVENE IN
SUPPORT OF CITY AND COUNTY OF SAN FRANCISCO'S PETITION TO MODIFY
DECISION 09-03-026**

PETER OUBORG
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Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: July 30, 2010

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Pursuant to Rule 11.1(e) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (U 39 M) (PG&E) files this response to the Town of Fairfax's (Fairfax) motion to intervene in support of the City and County of San Francisco's (CCSF) petition to modify Decision 09-03-026. While PG&E does not oppose Fairfax's intervention, Fairfax's motion does not assert any reasonable basis for halting PG&E's approved SmartMeter™ Program. Fairfax simply endorses CCSF's contentions, which PG&E already addressed in its July 19th opposition to CCSF's petition.¹ Given the duplicative nature of Fairfax's motion, Fairfax's requested intervention will not add value to the record that is presently before the Commission.

¹ In addition to the wholesale adoption of CCSF's arguments, Fairfax complains that PG&E has not complied with its local permitting requirements concerning antenna installation. PG&E has responded directly to Fairfax (see attached letter), pointing out that the deployment of SmartMeter™ equipment falls within the Commission's exclusive jurisdiction and that Fairfax's discretionary permit requirements are therefore preempted.

For the foregoing reasons, PG&E respectfully requests that the Commission proceed without delay to rule on CCSF's petition, which, for the reasons that PG&E has previously articulated, should be denied.

Respectfully Submitted,

PETER OUBORG
CHONDA J. NWAMU

By: _____ /s/
PETER OUBORG

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ATTACHMENT



Pacific Gas and
Electric Company®

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July 12, 2010

Michael Rock
Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Re: Deployment of PG&E's SmartMeter™ Network Equipment Within Fairfax

Dear Mr. Rock:

Thank you for your June 17th letter to PG&E's Joshua Townsend concerning the PG&E SmartMeter™ antenna located at Bolinas and Frustruck Roads. As I understand your letter, the Town of Fairfax takes the position that (a) Town Code Section 19.04 requires a discretionary use permit before PG&E can install any wireless communication facility (including a SmartMeter™ antenna), (b) PG&E must submit an application for any antenna planned within the Town, and (c) PG&E must submit its application for the Bolinas/Frustruck antenna by today to avoid administrative fines. As the California Public Utilities Commission has expressly pre-empted this subject matter, we respectfully disagree. Indeed, the CPUC previously has declared that attempts to interfere with PG&E's SmartMeter™ program violate the CPUC's exclusive jurisdiction.¹

The CPUC already has spent nearly a decade regulating next-generation, wireless metering systems such as PG&E's SmartMeter™ program, and only authorized PG&E to install its SmartMeter™ devices after considerable scrutiny. And the CPUC still is actively regulating PG&E's use of the devices in numerous contexts, including through dynamic pricing, *i.e.*, application of different rates at different times of day, as to which CPUC-review already is underway; creation of a "Smart Grid;"² more widespread use of plug-in electric cars;³ expansion of PG&E's "smart" air conditioning program;⁴ and broader implementation of energy

¹ See attached copy of January 8, 2008 letter from CPUC Assistant General Counsel Arocles Aguilar to San Francisco City Attorney Dennis J. Hererra.

² See R.08-12-009 ("Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's Own Motion to Actively Guide Policy in California's Development of a Smart Grid System").

³ See R.09-08-009 ("Order Instituting Rulemaking To Consider Alternative-Fueled Vehicle Tariffs, Infrastructure And Policies To Support California's Greenhouse Gas Emissions Reductions Goals").

⁴ See A.07-04-009 ("Application of [PG&E] for Approval of 2008-2020 Air Conditioning Direct Load Control Program") and D.08-02-009 ("Opinion Granting Application as Modified..."), as modified in D.09-01-016 ("Decision Granting Petition to Modify Decision 08-02-009").

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conservation and demand response programs.⁵ The prospective benefits of this technology are potentially massive. The Commission has described these benefits as “including reducing greenhouse gas emissions, increasing energy efficiency and demand response, expanding the use of renewable energy, and improving reliability.”⁶

Although the foregoing Commission decisions are publicly available, I believe it may be helpful to briefly discuss two of these decisions. On June 15, 2006, the Commission issued its Final Opinion Authorizing PG&E to Deploy Advance Metering Infrastructure (D.06-07-027), a copy of which I provide with this letter. In D.06-07-027 the Commission authorized PG&E’s deployment of the proposed advanced meter infrastructure project. The project includes the automation of PG&E’s gas and electric metering and communications network (5.1 million electric meters and 4.2 million gas meters) and consists of both metering/communications infrastructure and related computerized systems and software. This Decision includes findings of fact and conclusions of law with respect to the deployment of PG&E’s network equipment, and, among other things, expressly approves PG&E’s selected AMI technology and finds that it meets all of the Commission’s functionality requirements. *See* Ordering Paragraph 1. The Commission also found that the AMI deployment is not a “project” subject to the California Environmental Quality Act (CEQA) and that no CEQA review is necessary. *See* Finding of Fact #18, Conclusion of Law # 18.

On March 13, 2009, the Commission approved the construction and deployment of certain technology upgrades to PG&E’s original AMI Project in D.09-03-026, a copy of which I also enclosed. In this Decision, the Commission made findings and conclusions of law that support the use of these technology upgrades. Among other things, the Commission found that PG&E’s SmartMeter™ Upgrade Program would promote consistency among all utilities throughout the state. *See* Finding of Fact #1. The Commission has similarly approved California’s other investor-owned utilities’ installation of advanced metering throughout California as a means of implementing a Smart Grid and enabling energy-conservation. The Legislature addressed this in Public Utilities Code Section 8363(a), which states “By July 1, 2011, each electrical corporation shall develop and submit a smart grid deployment plan to the commission for approval.”

The Commission’s decisions in D.06-07-027 and D.09-03-026 memorialize its intent to regulate all aspects of the deployment of PG&E’s SmartMeter™ equipment. In view of the Commission’s exercise of jurisdiction relating to the SmartMeter™ equipment, PG&E should not be required to obtain any discretionary use permits from Fairfax for the construction of the network equipment. The State’s occupation of this subject matter area pre-empts any such administrative requirements.

⁵ *See* A.08-06-003 (“Application of [PG&E] for Approval of 2009-2011 Demand Response Programs and Budgets”) and D.09-08-027 (“Decision Adopting 2009-2011 Demand Response Activities and Budgets”).

⁶ *See supra*, Smart Grid Docket, R.08-12-009 at 2.

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We therefore request that Fairfax recognize the installation of the SmartMeter™ network equipment does not require any discretionary use permit from the Planning Commission under Fairfax Municipal Code Section 19.04. All decisions relating to the technology, safety, environmental, construction and siting of the SmartMeter™ equipment are matters that fall within the exclusive jurisdiction of the California Public Utilities Commission; and, further, that any discretionary permit for the installation of the network equipment and poles would impermissibly intrude on the Commission's authority.

For clarity, and because you have identified a single antenna within the Town's boundaries, I wish to advise you that PG&E installed not one but four Data Collector Units within Fairfax as part of the utility infrastructure necessary to support its SmartMeter™ Project. I have identified the approximate locations of these DCUs in the attachment to this letter. Each DCU consists of a cabinet attached to an existing PG&E utility pole and two mast antennae that serve to receive metering data from customers within Fairfax. The cabinet houses the electronics, which include a receiver, cellular telephone, charging circuit, modem, and control system.

I hope that this letter clarifies PG&E's position that the deployment of the SmartMeter™ equipment falls within the jurisdiction of the Commission. Of course, I would be happy to discuss this jurisdictional issue further with the Town Attorney in an effort to informally resolve any concerns Fairfax may have relating to the installation or operation of the SmartMeter™ equipment.

Very truly yours,



Grant Guerra

GG:rt

Enclosures

cc: Joshua Townsend

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DCU identification number	Approximate Location
NLC 13407	Across from 305 Bolinas Road
NLC 13408	94/96 Laurel Dr
NLC 14079	12 Westbrae Dr
NLC 14080	26 Olema Rd

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, Post Office Box 7442, San Francisco, CA 94120.

On the **30th day of July, 2010** I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S
RESPONSE TO THE MOTION OF THE TOWN OF FAIRFAX TO INTERVENE
IN SUPPORT OF CITY AND COUNTY OF SAN FRANCISCO'S PETITION TO
MODIFY DECISION 09-03-026**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service lists for **Application No. 07-12-009** with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service lists for **Application No. 07-12-009** without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2010, at San Francisco, California.

/s/
JENNIFER S. NEWMAN