

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

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

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

**PREHEARING CONFERENCE STATEMENT OF THE CITY AND COUNTY OF  
SAN FRANCISCO**

**INTRODUCTION**

The City and County of San Francisco (“City”) submits this Prehearing Conference Statement, pursuant to the Administrative Law Judge’s Ruling Setting Prehearing Conference dated August 6, 2010 (“ALJ Ruling”). The City is authorized to state that the County of Santa Cruz, and the Cities of Santa Cruz and Scotts Valley join in this Prehearing Conference Statement.

The California Public Utilities Commission (“Commission”) should act now and grant the City’s request for a temporary suspension of SmartMeter deployment by Pacific Gas and Electric Co. (“PG&E”). There is no need to wait until The Structure Group has issued its report, nor are there any factual disputes or legal issues that require any hearings before the Commission could suspend PG&E’s SmartMeter deployment. Almost 60 days have passed since the City filed its petition, and during that time PG&E has probably installed more than 425,000 additional SmartMeters.<sup>1</sup> The Commission

---

<sup>1</sup> As of August 8, 2010, PG&E estimates that it has installed 6,431,626 SmartMeters. (See <http://www.pge.com/myhome/customerservice/smartmeter/programupdates>). On June 18, 2010, the day after the City filed its Petition, PG&E estimated that it had installed 6,007,536 SmartMeters. (See [http://www.pge.com/includes/docs/pdfs/myhome/customerservice/meter/smartmeter/SmartMeterProgramData\\_7-06-10.pdf](http://www.pge.com/includes/docs/pdfs/myhome/customerservice/meter/smartmeter/SmartMeterProgramData_7-06-10.pdf).)

must act now in order to prevent any further harm to ratepayers, and to assuage increasing customer concern over the accuracy and safety of SmartMeters.

### **THE CITY'S PETITION FOR MODIFICATION**

On June 17, 2010, the City filed a petition to modify Decision ("D.") 09-03-026 ("Petition"). In D.09-03-026, the Commission granted PG&E's application to increase revenue requirements and recover the costs to upgrade its SmartMeter Program. In its Petition, the City has asked the Commission to modify D.09-03-026 by temporarily suspending PG&E's deployment of its SmartMeters until the Commission's investigation of that deployment is complete.<sup>2</sup> The City filed its Petition because of mounting evidence that PG&E's SmartMeter deployment was harming ratepayers.

### **THE CITY'S RESPONSE TO THE QUESTIONS CONTAINED IN THE ALJ RULING**

The ALJ Ruling establishes a prehearing conference and invites parties to file prehearing conference statements addressing three specific issues. Each of those issues is discussed below.

#### **1. Do available facts support the immediate suspension of PG&E's program of installing SmartMeters™?**

Yes, available facts support the immediate suspension of the SmartMeter installation program. In its Petition, the City provided extensive evidence of the problems PG&E has had with its SmartMeter deployment.<sup>3</sup> Those facts were taken almost entirely from reports that the Commission had ordered PG&E to make available to the general public. Those reports demonstrate that the Commission's

---

<sup>2</sup> The Cities of Capitola, Santa Cruz, Monte Sereno, and Scotts Valley, the Town of Fairfax, the County of Santa Cruz, and TURN all joined in the City's petition.

<sup>3</sup> See Petition, pp.3-7.

immediate suspension of PG&E's SmartMeter deployment is necessary in order to prevent further harm to ratepayers.<sup>4</sup>

There is also no evidence that a moratorium would impose unreasonable costs on PG&E's ratepayers. As the Division of Ratepayer Advocates notes, a "temporary suspension of deployment pending the Commission's investigation would have cost consequences, but there are potential cost consequences to not suspending deployment, too."<sup>5</sup> PG&E asserts that suspending SmartMeter deployment "could trigger a variety of operational expenses and impacts"<sup>6</sup>, but PG&E has not substantiated that claim even though it had ample opportunity to do so. This information should be readily available to PG&E. If the facts supported the Commission denying the City's Petition simply because it was too expensive, PG&E should have provided the Commission with evidence to support that assertion. Its failure to do so is telling.

**2. Should the Commission defer action until receipt of the report researching the new meters and the installation program? Is it possible to commence with this proceeding in a way that permits the incorporation of the projected Commission report?**

In answer to the first question, no. The Commission should not defer action on the City's Petition until after the investigation is complete. While the report is due at the end of the summer, there is no guarantee that it will be completed on time. Meanwhile, PG&E continues to install hundreds of thousands of SmartMeters each

---

<sup>4</sup> In its opposition to the City's petition, PG&E does little to refute those facts. Rather, PG&E simply asserts – with limited citation to the record – that "available evidence" demonstrates that "PG&E's SmartMeter™ technology is accurate and reliable, already is helping customers to better manage their power usage, and is a considerable improvement over PG&E's legacy metering technology." PG&E's Opposition to the City's Petition to Modify Decision 09-03-026 ("PG&E Opposition"), p.3.

<sup>5</sup> DRA Response to the City's Petition to Modify Decision 09-03-026, p.1.

<sup>6</sup> PG&E Opposition, p.5.

month.<sup>7</sup> If the Commission fails to act now, PG&E could continue to subject thousands of new PG&E customers to the problems that have already arisen in many communities where PG&E has deployed SmartMeters. Furthermore, the Commission does little to assuage ratepayer concerns by allowing the installations to continue despite the pending investigation. The record before the Commission is sufficient to establish the need for immediate Commission action.

In fact, the Commission's failure to act on the City's Petition has led at least one community to take action on its own. The Town of Fairfax recently imposed its own six-month moratorium on the installation of SmartMeters.<sup>8</sup> The Town Council expressed concerns about both the accuracy of PG&E's SmartMeters and electromagnetic frequency radiation emitted from the SmartMeters.<sup>9</sup> In adopting the moratorium as an "urgency ordinance," the Town Council found that "[t]here is a current and immediate threat to the public health, safety and welfare."<sup>10</sup> Violations of the moratorium are punishable as a misdemeanor.<sup>11</sup>

In answer to the second question, it may be *possible* for the Commission to move forward with this proceeding in a way that incorporates The Structure Group's report. Nonetheless, doing so would limit the Commission's ability to use the report to protect ratepayers.

As discussed above, while the Commission waits for the report PG&E will continue to install tens of thousands (or possibly hundreds of thousands) of new SmartMeters. Only by suspending the installation of SmartMeters *now* will the

---

<sup>7</sup> According to PG&E, in an average week PG&E installs over 60,000 SmartMeters. (See PG&E SmartMeter Report, p.7 (June, 2010).)

<sup>8</sup> A copy of the Town of Fairfax Ordinance No. 752 is attached hereto. The Town chose six months with the expectation that the Commission will have acted on the City's Petition by then. Ordinance No. 752, § I.J.

<sup>9</sup> Ordinance No. 752, §§ I.F, I.H, I.I.

<sup>10</sup> Ordinance No. 752, § I.K.

<sup>11</sup> Ordinance No. 752, § II(2).

Commission ensure that its investigation will be more than just a forensic exercise. The Commission should not waste this opportunity to correct problems with PG&E's SmartMeter deployment now – while there are still millions of SmartMeters yet to be deployed.<sup>12</sup>

**3. If the Commission elects to consider this Petition further, what should be the scope and timetable of its review of the SmartMeter™ program. If hearings are recommended, what are the factual issues in dispute? What, if any legal issues are implicated?**

The City respectfully requests that the Commission act on the City's Petition immediately. Hearings are not required. There are no factual or legal issues that need to be resolved at a hearing for the Commission to suspend PG&E's SmartMeter deployment as requested in the Petition.

As a factual matter, the City's Petition provides the Commission with ample evidence to modify D.09-03-026 by suspending SmartMeter deployment.<sup>13</sup> PG&E's admittedly poor installation history, public concern over the efficacy of meters, and the pending Commission investigation provide good cause to issue a temporary stay. Furthermore, the proceedings before the Commission on the City's Petition have provided PG&E with an adequate opportunity to address the City's assertions.

As a legal matter, it is appropriate for the Commission to grant temporary relief without an evidentiary hearing.<sup>14</sup> In addition, the Commission has recognized its authority and duty to stay a decision that results in confusion or uncertainty, pending

---

<sup>12</sup> According to PG&E, as of July 23, 2010 PG&E has installed over 6.3 million SmartMeters and has some 3.2 million to go before its deployment is complete. (See [http://pge.com/includes/docs/pdfs/myhome/customerservice/meter/smartmeter/SmartMeterProgramData\\_8-10-10.pdf](http://pge.com/includes/docs/pdfs/myhome/customerservice/meter/smartmeter/SmartMeterProgramData_8-10-10.pdf).)

<sup>13</sup> See Petition, pp.3-7.

<sup>14</sup> See D.10-05-018, *Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program* (May 6, 2010) (Commission order staying D.10-03-021).

Commission resolution of those issues.<sup>15</sup> The City showed both in its Petition and in its Reply to PG&E's Opposition that this is such a case.<sup>16</sup>

For the reasons stated in the record of this proceeding, the Commission should grant the City's request for a temporary suspension of SmartMeter installations.

Dated: August 16, 2010

Respectfully submitted,

DENNIS J. HERRERA  
City Attorney  
THERESA L. MUELLER  
Chief Energy and Telecommunications Deputy  
WILLIAM K. SANDERS  
AUSTIN YANG  
Deputy City Attorneys

By: \_\_\_\_\_/S/  
WILLIAM K. SANDERS

Attorneys for Petitioner  
CITY AND COUNTY OF SAN FRANCISCO  
City Hall Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Telephone: (415) 554-6771  
Facsimile: (415) 554-4757  
E-Mail: william.sanders@sfgov.org

---

<sup>15</sup> See D.04-04-018, *In the Matter of the Application of Southern California Water Company (U 133-W), for an Order Authorizing it to Increase Rates for Water Service*, 2004 Cal. PUC LEXIS 113 (April 1, 2004).

<sup>16</sup> See Petition, p.11; City's Reply to PG&E's Opposition to the City's Petition, pp.2-3.

## **CERTIFICATE OF SERVICE**

I, **KIANA DAVIS**, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4698.

On August 16, 2010, I served the attached **PREHEARING CONFERENCE STATEMENT OF PETITIONER THE CITY AND COUNTY OF SAN FRANCISCO** by electronic mail on the CPUC Service List, Proceeding No. A0712009.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 16, 2010, at San Francisco, California.

\_\_\_\_\_  
*/s/*  
**KIANA DAVIS**

ATTACHMENT



ORDINANCE NO. 752

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED AS AN URGENCY MEASURE ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE TOWN OF FAIRFAX OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE TOWN OF FAIRFAX, AND DECLARING THE URGENCY THEREOF

The Town Council of the Town of Fairfax, California does ordain as follows:

Section I. Findings:

- 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. In addition, the Town retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "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. Further, 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. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and will be installing these meters in Fairfax in the very near future. PG&E has already installed antennae to support the SmartMeter system at four sites within the public rights of way in the Town without obtaining permits from the Town as required by Section 19.04 of the Town Code. Further, PG&E did not comply with Section XIV of General Order 131-D of the California Public Utilities Commission (the "CPUC"), which requires a utility to consult with the local jurisdiction on land use matter prior to locating its facilities.
- E. Concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The CPUC currently has pending before it a petition from the City and County of San Francisco, the Town of Fairfax and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated.

- F. Indeed, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Fairfax Town Council, including PG&E's confirmation that SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.
- G. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of 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.
- H. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.
- I. FCC safety standards exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc.. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies.
- J. Because the potential risks to the health, safety and welfare of Fairfax residents are so great, the Fairfax Town Council wishes to adopt a six month moratorium on the installation of SmartMeters and related equipment within the Fairfax Town Limits. The six-month period will allow the CPUC petition process referenced in Recital E above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.
- K. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the Town without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the Town's Code requirements, and subjecting residents of Fairfax to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.

L. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

## Section II. Moratorium

1. No SmartMeter may be installed in or on any home, apartment, condominium or business in Fairfax, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the Town for six months from the date of this Ordinance, at which time the Fairfax Town Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

2. Violations of this Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.08.010 of the Town Code or as administrative citations as set forth in Chapter 1.10 of the Town Code, in the discretion of the Town. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

3. The Fairfax Town Manager is hereby authorized to direct all Town Departments, including the Town Attorney, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

## Section III. Effectiveness

This Ordinance, being adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare and containing a declaration of the facts constituting the urgency, upon passage by a minimum four-fifths (4/5) vote of the Town Council, shall take effect immediately upon its adoption and shall continue in effect until modified or rescinded.

## Section IV. Severability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

## Section V. Publication

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building; which places are designated for that purpose.

The foregoing ordinance was duly adopted on the 4th day of August, 2010, by the following vote,  
to wit:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
LEW TREMAINE, MAYOR

Attest:

\_\_\_\_\_  
Town Clerk