

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 E).

Application 07-12-009
(Filed December 12, 2007)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION OF
ADMINISTRATIVE LAW JUDGE SULLIVAN**

I. INTRODUCTION AND SUMMARY

On November 15, 2010, Administrative Law Judge (ALJ) Sullivan issued a proposed *Decision Denying the City and County of San Francisco's Petition To Modify Decision 09-03-026* (the PD). The Division of Ratepayer Advocates (DRA) submits these comments on the PD pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure.

The City and County of San Francisco (CCSF) filed the Petition on June 17, 2010, seeking a temporary suspension of PG&E's SmartMeter deployment until the Structure Group's report on customer complaints about SmartMeters was released, and interested parties (as well as the Commission) had had an opportunity to review it. A number of cities and towns joined in CCSF's request.

The Structure Group's Report was released on September 2. Although the Commission has not provided any opportunity for review and comment on the report, the PD would dismiss CCSF's petition and close the proceeding on the grounds that (1) no party has identified "new facts" to support suspension of the deployment¹ and (2) "issues

¹ PD pp.1-2, 13; Finding of Fact No. 1; Conclusion of Law No.1.

concerning customer service and program costs have other procedural homes,” specifically, PG&E’s General Rate Case General (GRC).² The PD errs on both counts.

First, the exceptionally large volume of customer complaints about SmartMeters cited by petitioners, and the Commission’s own decision to have those complaints evaluated by an outside consultant, are significant new circumstances that have arisen since the Commission issued its decisions authorizing PG&E’s SmartMeter deployment. The Structure Report constitutes additional new evidence; furthermore, DRA has noted certain limitations and anomalies in the Report and has raised questions about what conclusions may reliably be drawn from it. It could not be clearer that there are material new facts.

Second, the GRC does not provide a “procedural home” for these issues. Certain issues related to SmartMeter costs are being addressed in the GRC, but most issues raised by SmartMeter complaints and by the Report’s conclusions are beyond the scope of the GRC. If this proceeding is closed, these issues will become “procedurally homeless.”

The PD reaches the wrong result for another, very simple, reason. The Commission is required to make its decisions regarding SmartMeters based on a record.³ The Commission appears to be relying on the Structure Report to conclude that the SmartMeter system is producing accurate bills, judging from the press release it issued when the Report was made public on September 2, 2010, stating that Structure Group had “found that the meters and associated software and billing systems are consistent with industry standards and are performing accurately.”⁴ The Commission appears to have concluded that the Report resolved questions about billing accuracy, and that no further action by the commission is needed. But the Commission has not reviewed the new

² PD p.13; Finding of Fact Nos. 2 and 3.

³ Public Utilities Code § 1757 (Commission decisions must be supported by its findings and those findings must be supported by “substantial evidence in light of the whole record.”)

⁴ “*CPUC RECEIVES RESULTS OF INDEPENDENT EVALUATION OF PG&E SMART METERS*” (press release issued September 2, 2010), available at http://docs.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/122937.htm.

evidence regarding PG&E’s SmartMeter deployment in any proceeding, has not provided interested parties an opportunity to comment on or supplement the new evidence, and has yet to make any findings of its own. DRA has stated in this proceeding that these issues need to be considered in a public proceeding in order to develop a record that can legally support Commission decisions about what further action should or should not be taken regarding PG&E’s SmartMeter program. This proceeding is an appropriate “procedural home” in which to develop such a record.

II. DISCUSSION

A. The PD Errs In Finding That Petitioners Have Cited No “New Facts.”

The PD would close the proceeding on the ground that “[t]he Petition offers no facts concerning the inaccuracy of the SmartMeters or PG&E’s billing system,”⁵ and on that basis concludes that CCSF’s petition fails to conform to Rule 16.4(b) of the Commission’s Rules of Practice and Procedure, which requires that factual allegations in support of a petition for modification of a Commission decision be supported with citations to the record or “to matters that may be officially noticed.”⁶ CCSF and other parties have discussed, in their pleadings, the fact that thousands of PG&E customers have submitted complaints since SmartMeter deployment began — to PG&E, to the Commission, to their state legislators, and at town hall meetings. That PG&E’s customers have complained in such large numbers (while the Commission has received few complaints concerning advanced metering from customers of other utilities) is a “new fact” — a development that has occurred since the Commission issued its decisions authorizing PG&E SmartMeter deployment.

⁵ PD, p, 13.

⁶ Finding of Fact No.1; Conclusion of Law No. 2; PD, p. 9, quoting Rule 16.4(b) of the Commission’s Rules of Practice and Procedure.

The Commission publicly acknowledged this new development when it announced at its meeting of November 20, 2009 that it was arranging an independent assessment of SmartMeter complaints. As noted in the PD:

The Commission acted at our November 20, 2009 business meeting to initiate independent testing of PG&E's SmartMeters and related software due the public concerns raised about PG&E's deployment.⁷

These facts, which the Commission has publicly acknowledged, may be officially noticed (indeed, it may be argued that the Commission has already done so.)

The mere release of the Structure Group Report (Structure Report or Report) on September 2 is another material new fact. And the Report presents new information about SmartMeter complaints and performance (as well as findings and conclusions that may or may not be reliable). Structure reports, for example, that it “did not identify pervasive issues with meter data or billing systems.”⁸ The Commission apparently relied on this rather carefully worded statement when it issued a press release on September 2 (the date the Commission made the Report public) stating that Structure Group had “found that the meters and associated software and billing systems are consistent with industry standards and are performing accurately.”⁹

In reply comments filed on October 29, 2010, DRA cautioned the Commission that the Report contains information that leads DRA to question whether that broad conclusion is supported by the evidence presented in the Report. DRA called attention to specific facts about the Report, including the following:

1. Structure used a very small sample size, particularly for end-to-end tests.
2. PG&E swapped out some meters prior to field tests.

⁷ PD, p. 2. The Commission also posted this information on its website

⁸ Report, p. 16.

⁹ “*CPUC RECEIVES RESULTS OF INDEPENDENT EVALUATION OF PG&E SMART METERS*” (press release issued September 2, 2010), available at http://docs.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/122937.htm.

3. 1 out of 6 meters tested failed the high-temperature laboratory tests.
4. The Report's findings of meter accuracy are based on the CPUC's 2% tolerance established for electromechanical meters — a much lower standard than the 0.2% manufacturer's standard for its advanced solid-state meters and PG&E's own standard of 0.5%.
5. The Report's findings of meter accuracy are based on average values rather than on performance tested under "light load" and "full" load conditions, an approach that obscures any failures observed at specific loads.¹⁰

DRA has continued its preliminary review of the Report,¹¹ and in doing so has discovered other anomalies and limitations, including the following:

Interference and unexplained usage spikes

Structure Group's interview of customer "18X" clearly indicates that the PG&E SmartMeters created interference that resulted in dramatically higher bills. In the case of this customer, PG&E admitted that SmartMeter interference turned on lights in a vacation house, resulting in nearly \$1,000 in billing error over 3 months. PG&E corrected the bills, but the error came to light only because the customer complained to PG&E.¹²

This evidence directly contradicts the statement elsewhere in the Report that "Structure ruled out Smart Meters as the cause of these [interviewed] Customers' issues."¹³ The Report also states that of 20 customers interviewed, nine had unexplained spikes in electricity usage.¹⁴ Structure states that degradation of the old

¹⁰ DRA Reply Comments, pp. 3-5.

¹¹ As explained in earlier comments, thus far DRA has had to review the Report without the assistance of an AMI expert, because the state budget crisis made it impossible to obtain the required approval from the Department of General Services (DGS) of a contract for consultant services. DRA is now awaiting approval of the AMI consultant contract from the DGS.

¹² See Report, pp. 169-170.

¹³ Id. at p. 144.

¹⁴ Report, p. 202. Such usage spikes are also seen in the interview data on pp. 146 – 168. Customer 5X had a January 2010 bill close to \$600, when no other winter data exceeded \$250; customer 14X had a usage increase of approximately 75% in their December 2009 bill; customer 16X experienced over a doubling of their July 2009 bill; and customer 17X showed dramatically increased usage throughout 2009 after the SM was installed.

electromechanical meter is a “potential explanation” for the spikes, but this is inconsistent with data presented in the Report. For example, degradation would typically result in usage being biased in one direction (producing usage data over or under actual usage) month after month, rather than intermittent spikes like those experienced by customer “5X.”¹⁵ The Report does not explain what caused these spikes, or how Structure was able to “rule out Smart Meters as the cause of these Customer’s issues.”

Data storage issues

Nearly 13,000 meters had data storage “issues,” according to information provided by PG&E.¹⁶ While most of those meters have been replaced, there were still 1,500 such meters in operation when the Report was prepared. The root cause of these issues is not discussed in the Report, nor is there any discussion of how this type of problem can be prevented in the future.

Meter Deployment, Meter Data Management System Interfaces, and Validation, Editing, and Estimation issues

The Report states that “some concerns were noted around PG&E’s practices related to Meter Deployment, Meter Data Management (MDM) Interfaces, and VEE [validation, editing, and estimation].” As a result,

“extensive manual exception handling, instead of automated handling of issues has allowed many metering and billing errors to occur on a repetitive basis, over time, furthering the perception that the Smart Meters are not accurate.”¹⁷

DRA takes issue with the Report’s characterization that repetitive metering and billing errors “further the perception” that SmartMeters are inaccurate. The cited facts indicate that errors in the MDM system and in interfacing with existing IT systems can lead to billing that is not just “perceived” as inaccurate, but actually *is* inaccurate.

¹⁵ Report, Figure 55 and 56, p. 147. Note that the discussion of Customer 5X is mute regarding performance of the old meter.

¹⁶ Report, p. 187.

¹⁷ Id. p. 205.

The number of complaints reported as received by PG&E was likely understated.

Structure reports that it was told by PG&E that “a complaint was not marked as a Smart Meter complaint if the Customer did not mention that they had a Smart Meter.”

Structure observes:

This approach may result in complaints not being accurately coded and reported as Smart Meter complaints. Some Customers interviewed indicated that complaints were registered with both the CPUC and PG&E, although only the CPUC record was identified.¹⁸

The Report also notes that 117 customer complaints to the Commission’s Consumer Affairs Branch (CAB) “had been excluded from the PG&E-provided consolidated list [of complaints made to PG&E, to the CPUC, or to both]” and Structure did not analyze those complaints.¹⁹ The apparent failure to identify all of the SmartMeter complaints received by PG&E (for whatever reason) could constitute a significant limitation of the Report, especially in light of the fact that only 20 customers were interviewed and only 4 meters subjected to end-to-end testing in the field.

Other Limitations of the Report

The Report does not explain why the problems noted above occurred, or how testing of a small sample can reliably support conclusions about the entire meter population. It provides very limited information about the extent to which the problems that have been identified (by PG&E and/or Structure Group) have been resolved. Generally, the analytical methods used by Structure, particularly regarding sampling, end-to-end tests, and high bill complaints, are not fully described in the report. Discovery would be necessary to determine whether Structure’s conclusions are supported by the investigation performed.

¹⁸ Report, p. 200.

¹⁹ Id.

The Commission should reach its own conclusion after reviewing the Report

The limitations and anomalies noted above, including those that DRA brought to the Commission's attention earlier in the proceeding, are significant new facts. Now that the Report has been provided, the Commission should consider these new facts, and any others that are relevant, in drawing its own conclusions about why PG&E's SmartMeter deployment has triggered so many complaints, and what should be done about it.

B. Outside Of This Proceeding, There Is Currently No Other "Procedural Home" For Review Of The Structure Group's Assessment Of SmartMeter Complaints.

The PD acknowledges that CCSF, DRA, and TURN have all asked the Commission to keep this proceeding open to review the Structure Report,²⁰ but would close this proceeding on the additional ground that SmartMeter issues can be addressed in other proceedings.²¹ The PD correctly states that certain issues related to costs and customer service are being addressed in the GRC, but only certain narrow issues are being addressed there. No other proceedings are mentioned, and the PD does not identify a "procedural home" for review of the Structure Report. If this proceeding is closed, most of the issues discussed above will become "procedurally homeless."

The SmartMeter issues being addressed in the GRC are essentially cost recovery issues such as whether SmartMeter costs are being booked appropriately (a question to be answered by the audit referred to in the PD), and the costs of that audit and of the Structure Group's investigation, which PG&E seeks to recover from ratepayers. Meter reading costs in 2011 and depreciation of old meters are also being addressed. These are issues appropriately addressed in the GRC.

The Commission, however, has consistently addressed advanced metering program issues, including technical and deployment management issues, in separate proceedings, such as this one. This proceeding is an appropriate "procedural home" in

²⁰ PD, pp. 9-13.

²¹ PD, pp. 13-14.

which to evaluate the problems that have developed with the SmartMeter deployment — and solutions, as well — because SmartMeter technical issues and other deployment management issues were previously addressed in this proceeding; any measures the Commission may decide to take to address the current problems would likely require modification of the prior decision (Decision 09-03-026). In addition, the Structure Report, which contains new information, has been made part of the record in this proceeding.²²

III. CONCLUSION

The Commission should reject the PD for all of the reasons discussed above, and should keep this proceeding open to review the Structure Report. The Commission should determine, in a public proceeding and with the participation of interested parties, whether problems concerning SmartMeters are now sufficiently understood, whether they have been resolved, and what, if any, further action the Commission should take to ensure that customers with SmartMeters are billed correctly. This is an appropriate proceeding for that purpose.

Respectfully submitted,

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December 6, 2010

²² Assigned Commissioner's Ruling of September 2, 2010, Attachment A.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE SULLIVAN** to the official service list in **A.07-12-009** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **December 6, 2010** at San Francisco, California.

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