

TOWN OF FAIRFAX

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December 15, 2014

Michael Peevey, President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Application 11-03-014: 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)

Dear President Peevey:

I am writing on behalf of the Fairfax Town Council regarding the proposed decision of the Commission on the above-referenced matter.

For the reasons set forth herein, the Town of Fairfax has concerns with the proposed decision of Judge Yip-Kikugawa and your alternate proposed decision. Our Town is requesting that the Commission continue the current moratorium within Fairfax, as we have passed a local ordinance which prohibits deployment of the Smart Meter system. And, while we cannot speak on their behalf, it would be appropriate to continue the moratorium for all jurisdictions that have adopted like ordinances.

There are four essential reasons why the existing “opt-out” jurisdictions should be grandfathered in.

First, the cost analysis to calculate opt-out costs for PG&E’s territory already includes the ongoing costs of monitoring analog meters in current opt-out jurisdictions. Hence, maintaining the status quo is a “low-cost and no-cost” outcome consistent with CPUC precedent (see EMF discussion below).

Second, the continued moratoria in existing opt-out jurisdictions will provide “control” comparisons which will provide data to determine the energy savings and efficacy of the Smart Meter deployment.

Third, the Commission should conduct a cost comparison of providing hard-wired smart meter alternatives for jurisdictions that have opted out of the wireless system.

Fourth, the proposed decisions disregard local democracy and potentially violate municipal legislative and franchise agreement authority.

Letter to the California Public Utilities Commission

Re: Application 11-03-014

Page: Two

We also have concerns regarding electric and magnetic fields (“EMF”) sensitivity and Smart Meters. EMF sensitivity has been recognized as a major public concern by the California Public Utilities Commission for many years.¹ Recognizing the scientific uncertainty over the connection between EMF exposures and health effects, the CPUC adopted a policy that addresses public concern over EMF with a combination of education, information, and precaution-based approaches. Specifically, Decision 93-11-013 established a precautionary approach based upon “no-cost and low-cost” EMF policy for California’s regulated electric utilities.

In 2006, the CPUC reviewed the EMF policy (Decision 06-01-042), reiterated the previous findings, and clearly affirmed the policy direction that the existing “no-cost and low-cost” precaution-based EMF policy *should be continued for proposed electrical facilities*.

The Proposed Decisions incorporate cost analyses that already include the current costs of reading and analyzing electrical meters in existing opt-out jurisdictions such as Fairfax. Hence, continuation of the use of existing metering devices would be a “no-cost or low-cost” precaution-based EMF policy consistent with the Commission’s earlier decisions.

As has been widely reported, the cost-effectiveness of smart meters has yet to be demonstrated (see *New York Times*, December 5, 2014 “Power Savings of Smart Meters Prove Slow to Materialize”). Continuation of moratoria in jurisdictions that have already opted out will not only provide a safe haven for a Commission-recognized cohort of EMF-sensitive customers, it will also provide system-wide benefits to other ratepayers as a “control comparison” that can determine the cost efficiency of the proposed Smart Meter system as opposed to existing analog systems. Further, adding a cost analysis of providing wired alternatives to the wireless Smart Meter system would also provide the benefit of determining whether such systems could provide safer and more reliable data to both customers and utilities alike.

Finally, while this Commission has questioned whether the Town of Fairfax’s decision to decline Smart Meters reflects local democracy, in fact there was essentially no local public input for the deployment of the Smart System. Additionally, in Fairfax the system was constructed in the public right of way by PG&E without obtaining encroachment permits or seeking compliance with Fairfax’s longstanding Wireless Communications Facilities Ordinance (Fairfax Town Code Title 19).

Fairfax retains authority under Article XII, Section 8 of the California Constitution to grant franchises for public utilities, and 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.” In 1954, the Town of Fairfax entered into a Franchise Agreement with PG&E which provides it with access to its public rights of way to “*construct poles, wires, conduits, meters, and related items used in distributing electricity.*” [*Emphasis added.*]

¹ San Diego Gas & Electric Co. v. Superior Court (1996) 13 Cal.4th 893, 55 Cal.Rptr.2d 724; 920 P.2d 669

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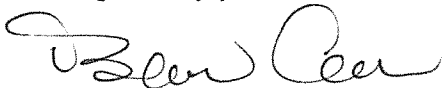
Page: Three

Allowing incorporated jurisdictions like Fairfax that have passed ordinances to opt out of the Smart Meter system is entirely consistent with the proven delegated decision-making authority that has been available to Community Choice Aggregation jurisdictions since 2003 under AB117. The Fairfax Town Council, consisting of five elected members, has unanimously passed and renewed the Smart Meter Moratorium Ordinance no less than three times since 2010, despite PG&E's vigorous opposition. In so doing, the Council has been acting as the duly authorized representative of the residents who own the public rights of way upon which the system resides.

The Town of Fairfax is ready, willing, and able to work with the Commission to arrive at a fair and democratic resolution of this precedent-setting issue. We respectfully suggest that the Commission continue to allow Fairfax and the other existing opt-out jurisdictions to continue their status until such time as further consideration and analysis can be brought to bear.

Thank you for your consideration of the Town of Fairfax's comments and concerns in this matter.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Barbara Coler".

BARBARA COLER

Mayor

cc: Commissioner Michael Florio
Commissioner Catherine Sandoval
Commissioner Carla Peterman
Commissioner Michael Picker