

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 17, 2017

By email to:
bcoler@townoffairfax.org
janet.coleson@bbklaw.com

Barbara Coler, Councilmember
Janet Coleson, Best, Best & Krieger/City Attorney for Town of Fairfax
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

RE: Fairfax Ordinance No. 806, Extending the Prohibition on the Installation of Smartmeters and Related Equipment Within the Town of Fairfax

Dear Ms. Coler:

I understand that, on February 1, 2017, the Town Council adopted the above-referenced ordinance purporting to impose a moratorium on PG&E's installation of SmartMeters and related equipment within the Town of Fairfax for three years.¹ We write you again to inform you of our view that the City's ordinance constitutes an unlawful interference with the exclusive jurisdiction of the California Public Utilities Commission (CPUC or Commission) over the regulation of public utilities.

As explained in the August 2, 2010, letter from my predecessor to Michael Rock, former Fairfax Town Manager (see attachment); Section 8 of Article 12 of the California Constitution states that "[a] city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission." The Legislature has granted the Commission authority over a public utility's infrastructure, including the installation of meters.²

¹ This ordinance essentially continues the policies embodied in Town of Fairfax Ordinance Nos. 752 and 775, adopted on August 4, 2010 and February 5, 2014, respectively.

² See Public Utilities Code section 761, granting the Commission authority (i) to regulate the practices, equipment, appliances, facilities, service and the methods of supply and distribution of public utilities and (ii) to determine whether any of those are unjust, unreasonable, unsafe, improper, inadequate, or insufficient; see also Public Utilities Code section 701, granting the Commission jurisdiction to regulate every public utility in the State and do all things, whether specifically designated in the Public Utilities Act or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

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Pursuant to CPUC Decision No. 06-07-027, issued July 20, 2006, PG&E is authorized by the Commission to deploy "Smart Meters" throughout its service territory. This authority was reaffirmed in Decision 14-12-078 (*Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeterTM Program and Increased Revenue Requirements to Recover the Costs of the Modifications*). As we have explained in previous letters as well as in the above-referenced Decisions, advanced metering technology is an important component of California's long-term goals to develop demand response capability throughout the state that would enhance electric system reliability, reduce power purchases and individual consumer costs for electric service, and reduce the emission of greenhouse gases and other toxic emissions. Natural gas SmartMeters are designed to achieve similar goals in the natural gas industry in California.

Your letter of February 14, 2017 to PG&E executives and posted on your town website urges that the pendency of requests for rehearing of Decision 14-12-078 renders PG&E actions to proceed with the installation of SmartMeters in the Town of Fairfax as improper to render moot the CPUC's rehearing process. This is not the case. California Public Utilities Code, Section 1735 explains:

"An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs."

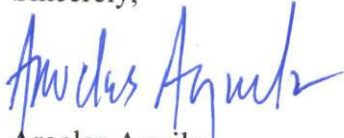
Therefore, PG&E is still required to proceed with the directives included in the above-referenced Commission Decisions to install SmartMeters within PG&E's territory in order to facilitate state mandates to empower customers to increase their control over their electricity usage and reduce toxic emissions all over the state of California.

Under well-settled principles of California law, the Town of Fairfax has no authority to issue a moratorium on this Commission-approved public utility infrastructure program. It is our opinion, therefore, that the Town's ordinance is unlawful and unenforceable.

We will be happy to discuss this matter further with you and other representatives of the City.

Barbara Coler, Councilmember
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Sincerely,



Arocles Aguilar
General Counsel
Public Utilities Commission of the
State of California
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San Francisco, CA 94102
(415) 703-2015
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cc: Geisha Williams, Pacific Gas and Electric Company
John Simon, Pacific Gas and Electric Company
Garrett Toy, Town Manager, Town of Fairfax; gtoy@townoffairfax.org
Tim Sullivan, Executive Director, CPUC

AA:ice

Attachment

ATTACHMENT

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



August 2, 2010

Michael Rock, Town Manager
Fairfax Town Hall
142 Bolinas Road
Fairfax, CA 94930
Fax: 415.453.1618

**Re: Proposed Emergency Ordinance Establishing A Temporary Moratorium On
The Installation Of Smart Meters**

Dear Mr. Rock:

It has been brought to our attention that on August 4, 2010, the Town Council of the Town of Fairfax is scheduled to consider a proposed emergency ordinance establishing a six-month moratorium on the installation of Smart Meters 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.

We are writing to inform you of our view that the Town of Fairfax's proposed ordinance would interfere with the exclusive jurisdiction of the California Public Utilities Commission (CPUC or Commission) over the regulation of public utilities.

Section 8 of Article 12 of the California Constitution states that "[a] city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission."¹ The Legislature has granted the Commission authority over a public utility's infrastructure, including the installation of meters. (See Public Utilities Code section 761, granting the Commission authority (i) to regulate the practices, equipment, appliances, facilities, service and the methods of supply and distribution of public utilities and (ii) to determine whether any of those are unjust, unreasonable, unsafe, improper, inadequate, or insufficient; *see also* Public Utilities Code section 701, granting the Commission jurisdiction to regulate every public utility in the State and do all things,

¹ Although Section 8 contains a limited exception for municipal regulations adopted pursuant to a city charter existing on October 10, 1911, we note that the Town of Fairfax was not incorporated until 1931.

Michael Rock, Town Manager

August 2, 2010

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whether specifically designated in the Public Utilities Act or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.)

Pursuant to CPUC Decision (D.) 06-07-027, since 2006 Pacific Gas and Electric Company (PG&E) has been and continues to deploy "Smart Meters" in its service territory. Similar initiatives are underway pursuant to subsequent Commission decisions pertaining to the other major electric utilities in the state in their respective service territories. In D.06-07-027, the Commission recognized that new, advanced metering technology may evolve, and ordered PG&E to monitor technological developments in order to upgrade its Advanced Metering Infrastructure (AMI) system as deemed appropriate by the CPUC. Thereafter, in D.09-03-026, the Commission approved PG&E's proposed upgrades to its Smart Meter program. The installation of advanced metering technology is an important component of the CPUC's long term goals to develop a more sophisticated, state-wide demand response capability, which would, in turn, enhance electric system reliability, reduce power purchase and individual consumer costs, and reduce the emission of greenhouse gases.

As part of your due diligence, I would ask that your office and the Town's legal counsel carefully consider the legal issues associated with the proposed ordinance.

Please feel free to contact me if you have any questions.

Thank you very much for your attention to this matter.

Sincerely,

/s/ Frank R. Lindh

Frank R. Lindh, General Counsel
Public Utilities Commission
of the State of California
505 Van Ness Avenue
San Francisco, CA 94102

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cc: Jim Karpiak, Town Counsel for the Town of Fairfax
Paul Clanon, Executive Director, CPUC