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Arizona Corporation Commission
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Re: Docket # E-00000C-11-0328

Commissioners;

I am following up on my letter of February 6th in which I pointed out that APS's letter of January 27th in the above docket was APS's usual half-truth.

As it turns out, the decision of the California Public Utilities Commission (CPUC) regarding "smart" meter extortion fees that APS supplied Maureen Scott of the ACC Legal Dept. is *already* under appeal.

An Application for Rehearing was filed with the CPUC on January 22nd, five days before APS's January 27th letter.

I have enclosed the EMF Safety Network's Application for Rehearing (which can be read online here:
http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M144/K897/144897236.PDF).

I suggest you and your Legal Dept. take the time to read it. It eviscerates the corrupt CPUC's decision. Many of its points also apply to your recent, illegal extortion fee decision.

Additionally, in the appeal you will read an email from corrupt PG&E Vice President Brian Cherry that relates the CPUC conspiracy to delay CPUC "smart" meter proceedings until all "smart" meters had been installed.

> "Mike [Peevey, the CPUC president] grumbled about the CCSF PFM [City and County of San Francisco Petition for Modification] and the folks in Sebastopool [sic] who want to delay SmartMeter implementation. He implied that this wasn't going to happen and that by the time the

Commission got around to acting on it, we would have installed all of our meters."

The same delay tactic appears to have happened here in Arizona. As I wrote and docketed almost exactly 2 years ago:

> "We are witnessing a classic example of complete regulatory failure. The only real question left is: ***Was this failure planned from the start and, if so, who got paid to ensure the failure?***
>
> Here's how I see it: You pass some noble sounding requirements that are completely ignored. You feign concern and oversight with a couple of show meetings that some commissioners do not attend or leave early. The meetings accomplish nothing and liars are not liable for anything they say at them since they are not under oath. A docket is set up to lend some faux legitimacy but it's really part of the rope-a-dope technique being used on the concerned individuals who send in information which is ignored. Before you know it five years have gone by and "smart" meter installation is a done deal.
>
> Is it incompetence or corruption? Either way, it looks like the public is damned."
> (http://images.edocket.azcc.gov/docketpdf/0000142973.pdf)

Sincerely,

Warren Woodward

Cc: Phoenix FBI, Attorney General Mark Brnovich, Governor Doug Ducey

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED
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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).	Application 11-03-014 (Filed March 24, 2011)
And Related Matters.	Application 11-03-015 Application 11-07-020

APPLICATION OF EMF SAFETY NETWORK

FOR REHEARING OF DECISION 14-12-078

January 22, 2015

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1. Introduction and Summary

On December 18, 2014, the Commission signed Decision (D.)14-12-078 which requires payment of fees for residential customers "who do not wish to have a wireless smart meter."[1] The Decision gives millions of dollars to the utilities; denies community and business opt out; and states the fees do not violate the Public Utilities Code (PUC) § 453(b) and the Americans with Disabilities Act (ADA). The Commission issued this Decision to parties of record on December 23, 2014. In compliance with Rule16.1, of the Commission's Rules of Practice and Procedure EMF Safety Network (Network) submits this Application for Rehearing.

The Commission has a legal obligation to ensure safe delivery of gas and electric service, and has committed legal error by conspiring to delay and ignoring substantive issues so PG&E could complete their deployment. Evidence for this allegation is based on an exparte filing in A.07-12-009.[2] On July 2, 2010 PGE's Brian Cherry wrote to Tom Bottorff about having spent a "good few days with Peevey and Bohn". Cherry's description of what took place included smart meters.

> "SmartMeters-Mike [Peevey] grumbled about the CCSF PFM [City and County of San Francisco Petition for Modification] and the folks in Sebastopool [sp] who want to delay SmartMeter implementation. He implied that this wasn't going to happen and that by the time the Commission got around to acting on it, we would have installed all of our meters."

Screen shot:

SmartMeters - Mike grumbled about the CCSF PFM and the folks in Sebastapool who want to delay SmartMeter implementation. He implied that this wasn't going to happen and that by the time the Commission got around to acting on it, we would have installed all of our meters. He was concerned about the Structure SmartMeter Audit. He said he could not go into details, but that we would like their conclusions on the viability of the technology and infrastructure that supports it. He did say the Structure Audit report would be very critical of the way we handled the problem and communicated with our customers. He was also highly critical of Helen and her handling of the Senate hearing in Sacramento.

Miscellaneous - .Mike couldn't hide his disdain for Mark Toney and TuRN. He was particularly incensed, along with Clanon, about TURNs refusal to modify their website about opposition to SmartMeters. I'm not too concerned about TURN and the GRC at this point. I don't believe we need them as a settlement partner with Peevey as the assigned Commissioner.

[1]D.14-12-078 Summary pg.2

[2]http://emfsafetynetwork.org/wp-content/uploads/2014/12/PGE-Letter-to-Mr.-Sullivan-Exhibits-1-17_-12-22-14.pdf

Application 11.03-014 and related matters has been a vehicle for President Peevey's conspiracy to delay and therefore ignore substantial smart meter complaints. PUC §1701.5(a) provides that ratesetting applications shall be resolved within 18 months of issuance of the scoping memo. A.11-03-014 was filed on March 24, 2011, and the first scoping memo was issued on May 25, 2011. The CPUC issued D.12-02-2014 on February 1, 2012, before evidentiary hearings were held. The second scoping memo was issued on June 8, 2012. Evidentiary hearings were held in November 2012. Starting in December of 2013, the Commission filed multiple 60 day delays[3]. To date this ratesetting proceeding that should have been concluded in 18 months has taken nearly four years.

D.14-12-078 contains fatal errors and violations of law:

- Requiring customers to pay opt out fees is coercion by exaction, extortion.
- A "pay to opt out" program does not provide relief to all customers.
- President Peevey made contradictory rulings regarding CPUC actions on smart meter health and safety review.
- Adopting a decision without a safety review is unlawful.
- Enough evidence has been submitted to the CPUC to warrant evidentiary hearings on smart meter health and safety impacts.
- Requiring customers to pay opt out fees who want to avoid harm, or the threat of harm, from pulsed electromagnetic radiation is a violation of utility laws including: PUC §§ 451, 453(b), 328.2(b).
- Ruling the ADA does not apply is an unlawful conclusion.
- Charging fees for meter readers to some customers and not others is discrimination.
- Opt out fees violate core principles of private property law.

[3]For example: Order Extending Statutory Deadline, December 5, 2012 http://docs.cpuc.ca.gov/Published-Docs/Published/G000/M083/K508/83508045.PDF

- The Administrative Law Judge deferred taking testimony on community opt-out, which was part of the scoping memo, then closed the proceeding without taking testimony on community opt out.
- The responsibility for the cost of the opt out program should rest with the true cost causers: the utilities and the CPUC.
- The utilities have been given substantial risk-based allowances. D.12-14-078 irresponsibly allocates millions more.

2. Extortion

Customers are forced to choose between paying to avoid harm, or the threat of harm[4] from the pulsed electromagnetic radiation (EMR) smart meters emit, or lose essential utility service. People have had fires at their homes due to smart meter installation. Customers are denied just and reasonable choices through coercion by exaction. Coercion and exaction are synonyms for extortion. The opt out fee is a government-imposed exaction whose purpose and effect is to coerce payment.

Extortion is defined as (California Penal Code Section 518): "Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right." Another definition is this comment by a PG&E customer: "What the heck is going on when we have to pay MORE for something we don't want, don't need, won't use and can't get out of. When the vacuum salesman comes to the door, and I don't want to buy a vacuum, I don't buy it and he doesn't get into my wallet."

Transcripts from the Public Participation Hearings (PPH) held between November 13th and November 20th, 2012 illustrate the outrage and frustration utility customers are feeling towards Smart Meters and being charged not to have them. Over 200 utility customers spoke to Administrative Law Judge Amy Yip-Kikugawa in five California

[4] The World Health Organization (IARC) classifies EMR a possible carcinogen, in the same category as DDT and lead. (May 2011)

cities.[5] Twenty speakers refer to the opt-out fees as "extortion".[6] Other descriptions[7] include: "a theft", "a scam", "un-American", "criminal", "tyranny", "pay not to be harmed", "abuse of power", "a penalty", "coercive", "highway robbery", and "an assault". Perception of CPUC abuse is so pervasive that customers outrage, indignation, and strong language is fully justified as Mr. Holz in Santa Barbara stated, "in self defense I would smash every single f***ing one of them."[8]

3. PUC § 451[9]

A "pay to opt out" program does not provide relief to all customers. For example, some customers cannot afford the fees, live in multi-unit dwellings with co-located antennas in multiple meter installations, or are surrounded by neighbors' smart meters. In consequence, some have been forced from of their homes[10]. Many commercial customers do not want a smart meter on their business; D.14-12-078 denies businesses the right to the opt out granted residential customers. A "pay to opt out" program does not meet the criteria of just and reasonable under PUC § 451.

The recent Safety Policy adopted by the CPUC on July 10, 2014, states that the Commissioners: "Certify through signature on Proposed Decisions that the findings, conclusions, and actions laid out in proceedings can meet the CPUC's overarching goals

[5] PPH were held in Bakersfield, Santa Barbara, San Clemente, Los Angeles and Santa Rosa RT 6-10
[6] PPH speakers Ms. Rose, 10 RT 1105: 17-19; Ms. Feral, 10 RT 1036: 3; Mr. Horn, 10 RT 1017: 24; Ms. Lee, 10 RT 1001: 24; Mr. Bercich, 9 RT 934: 25; Mr. Frank, 9 RT 929:18; Ms. Taar, 9 RT 942:16; Ms. Homan, 9 RT 944:3; Ms. Schlicht, 9 RT 954:14; Ms. Bruce, 8 RT 848: 28; Ms. Gregory, 8 RT 851:21; Mr. Grey, 8 RT 857:14; Mr. Sosenko, 8 RT 862:19; Ms. Barton, 8 RT 861:25; Mr. McSpadden, 8 RT 872:21; Ms. Brunoehler, 8 RT 877:10; Berit Sten, 7 RT 731:13; Sasha Letterman, 7 RT 753:22; Shirley Force, 7 RT 798:27; and Veronica Haverbeck, 7 RT 811:18
[7] Descriptions from various participants taken from PPH transcripts, 6-10 RT
[8] PPH speaker Mr. Holz, 7 RT 759: 8-10
[9] Public Utilities Code § 451 in part "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."
[10]Customers forced to move: Network Opening Brief July 16, 2012 p.7; RT 10: Heisler, p.1018, Sharik p.1044, Bullington p.1052, Jelter p.1099; RT 9; Anderson p.973; RT 8: Barris p.854, Levine 846, Gregory p.851; RT 7: Cree p.738, Gould p.813

and expectations, and assure that each vote on proceedings, resolutions, ratemaking, or other decisions of the CPUC addresses the CPUC's overarching goals and expectations regarding safety and resiliency." D.14-12-078 contravenes the CPUC action because it does not include a safety review as indicated by the statement[11] "we will not address the alleged health and safety impacts of smart meters here".

It is wrong to obviate statutory obligations for ensuring safety. President Peevey appointed himself to lead smart meter proceedings, and made contradictory rulings. On June 8, 2012 President Peevey's scoping memo in A.11-03-014 ruled the proceeding would not include a health and safety review[12]. On July 25, 2013 President Peevey's Decision (D.)13-07-024 states "...health issues raised by certain parties were under consideration in other active proceedings before the Commission..." [13] The scoping memo referred to in that July 25, 2013 decision indicated it was A.11-03-014 in which a review of health issues related to EMR smart meters was before the Commission. To the extent the Commissioners and the public were misled by President Peevey's contradictory rulings, D.13-07-024 is flawed. The public has been denied both the important and lawful right of public participation, and review of smart meter health and safety impacts.

D.95-11-017 states, "This order addresses the cellular phase of our EMF investigation, which considers the Commission's role in mitigating health effects, if any, of RF radiation generated by cellular utilities within the Commission's jurisdiction.... Public Utilities Code Sections § 451, and §1002[14] require the Commission to consider the impact of utilities' services on the environment and human health and safety. ... CACD [Commission Advisory and Compliance Division] shall hold informal cellular EMF and RF radiation workshops as additional health information becomes available and upon

[11] D. 14-12-078 p.7
[12] A.11-03-014 scoping memo issued on 6/8/2012
[13] D.13-07-024 p.5
[14] Public Utilities Code §1002, "(a) The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors: (1) Community values.(2) Recreational and park areas.(3) Historical and aesthetic values. (4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges there from would have a significant influence on the environment of this state."

preparation of any updated EMF reports, and shall report the results of such workshops to the Commission through the resolution process.[15,16] PUC § 14 states "Shall" is mandatory and "may" is permissive.

In D.95-11-017 Appendix A, the CACD warned the Commission, "The economic considerations of this issue are significant. CACD raises the equally, if not more important issue of health and safety of the public. ... The Commission is clearly responsible for ensuring that the utilities it regulates are providing service and facilities that do not constitute a threat to the public or the environment."[17]

Refusal to consider the health and safety impact of the smart meters program in this proceeding is contrary to these CPUC decisions and mandates.

The question of reasonableness also applies to customers who retained the analog meters. Where the utility will not incur new meter costs, customers are entitled to a credit.[18] [19] Customers who have two or more utility companies should not be double or triple charged to opt-out.[20]

4. PUC § 453(b)

Opt-out fees are unlawful under Public Utilities code § 453(b).[21] Customers are forced to pay added fees due to medical conditions. Smart meters can interfere with implanted medical devices. Smart meters have caused many people health problems. The record in the docket offers ample evidence that PUC code 453(b) applies.

Substantial evidence of EMR harm was presented to the Commission in both

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[15] D.95-11-017, Ordering Paragraph 2.

[16] D.95-11-017 is not directly available on the Commission's web site. See 1995 Cal. PUC LEXIS 842; 165 P.U.R.4th 403. The document can be found at the web address in footnote 16 herein.

[17] D.95-11-017, Appendix A, p. 11

[18] Exhibit EMF-1 3: 5-17

[19] Exhibit Aglet-1 19:15-19

[20] PG&E witness Raymond Blatter, 3 RT 352: 5-12

[21] No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code. A person who has exhausted all administrative remedies with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees.

phases of this proceeding, including the following: Dozens of Public Participation Hearing (PPH) speakers provided evidence on health problems since smart meter installation: headaches, tinnitus, sleep problems, heart problems, anxiety, nose bleeds, nausea, and more. Some wept as they stated they had been forced to move to avoid co-located antennas in multiple meter installations, and neighborhoods fully deployed with smart meters. For example, Dr. Toril Jelter, a board certified pediatrician and general practitioner with over thirty years experience, stated "When my neighbors got smart meters I developed severe tinnitus, fatigue, and neuropathy at home and at work." In consequence she had to close her practice and move her home to a low EMR area.[22]

International health experts are recommending the public reduce their exposure to EMR, and advising against installation of, or exposure to smart meters.[23] It is well known in May 2011, the International Agency for Research on Cancer, an arm of the World Health Organization, classified EMR as a 2b carcinogen.[24]

Network conducted a Wireless Utility Safety Impacts Survey in 2011[25]. The top reported health complaints for people with a smart meter on their home included sleep problems (49%), stress (43%), headaches (40%), ringing in the ears (38%) and heart problems (26%).[26]

The California Council on Science and Technology (CCST) report on smart meter safety[27] concluded, "The topic of potential health impacts from RF exposure in general ... continues to be of concern". California Department of Public Health (CDPH) commented on the CCST study, "CDPH suggests further review of the literature on non-thermal effects, which is complicated and controversial, but does not support a claim of no non-

[22] PPH speaker Ms. Toril Jelter, 10 RT 1098

[23] Exhibit EMF 1 9: 4-10 footnote 31 American Academy of Environmental Medicine calls for a halt to wireless smart meters http://emfsafetynetwork.org/?p=6985 , Smart Meters: Correcting the Gross Misinformation http://maisonsaine.ca/smart-meters-correcting-the-gross-misinformation/, Health Risks Associated With SmartMeters Poki Stewart Namkung, M.D. M.P.H 2012, and Sage Reports 2011, http://sagereports.com/smart-meter-rf/

[24] Exhibit EMF-1 4:22-24

[25]http://emfsafetynetwork.org/wp-content/uploads/2011/09/Wireless-Utility-Meter-Safety-Impacts-Survey-Results-Final.pdf

[26]See webcast for personal accounts from people suffering. December 1, 2011 CPUC business meeting http://www.californiaadmin.com/cpuc.shtml

[27]Health Impacts of Radio Frequency Exposure from Smart Meters, 2011

thermal health effects from radio frequency electromagnetic fields.[emphasis added]"

Discussing the threat of public harm from increasing and additive smart meter exposure, Poki Stewart Namkung, M.D. M.P.H, Santa Cruz County public health officer provided to the Santa Cruz County Board of Supervisors a report stating EMR "... is additive and consumers may have already increased their exposures to radiofrequency radiation in the home through the voluntary use of wireless devices ...It would be impossible to know how close a consumer might be to their limit, making uncertainty with the installation of a mandatory SmartMeter."[28] Other parties in this proceeding also submitted evidence of public health impacts.

5. PUC § 328.2(b)

PUC § 328.2(b) states: "No customer should have to pay separate fees for utilizing services that protect public or customer safety." Fires, burned out appliances, and electrical failures related to smart meters are reported in California, Florida, Georgia, Illinois, Maine, Pennsylvania, Texas, Australia, and Canada. Fire departments', safety and elected officials' and customers' accounts of these incidents are included in media reports.[29] On such a record, a customer could be justified in rejecting a Smart Meter for safety reasons and should not be charged a separate fee for asserting that protection.

At the Santa Rosa PPH Mr. Patrick Wrigley stated he was a former PG&E meter reader for nine and a half years in the Marin office when he was fired because he was not willing to conceal smart meter problems he witnessed. Mr. Wrigley said, "The fact that PG&E knows that they do catch on fire when they are remotely turned back on when a customer who is delinquent in their bill finally pays their bill. These meters catch fire. They know it, and they are covering it up."[30] Another speaker, Ms. Moskow stated, "I had terrible electric problems in my house once the smart meter was installed, fire

[28]Health Risks Associated with Smart Meters, 2011 p. 3 http://emfsafetynetwork.org/?p=6959
[29] Exhibit EMF-1 9: 22-24 to 10:1-4 footnote 16, Network has complied reports of Smart Meters Fires and explosions (including PG&E meters): http://emfsafetynetwork.org/?page_id=1280
[30] PPH speaker Mr. Patrick Wrigley 10 RT 1024:18-28 to 1025:1-2

coming out one of the outlets, many outlets not working."[31]

6. ADA

D.14-12-078 errs in the conclusion that the fees do not violate ADA laws.[32] The U.S. Access Board, a federal entity assisting in ADA implementation, declared that: "[M]ultiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual's major life activities."[33] People who are forced to relocate, or close their businesses due to major health effects from EMR smart meters are proof of functional disability in major life activities.

The statutory language is not confined to particular types of disability, but speaks broadly to interference with major life activities.[34] Notably, by reference to Section 11135 of the Government Code, Section 453(b) extends its protection against discrimination to "any program or activity that is conducted, operated, or administered by the state or by any state agency." The opt-out fees and attendant forced acceptance of smart meter installation, if enacted by the CPUC, would qualify as a program, service or activity engaged in by a public entity under Title II, and thus be amenable to judicial review for lawfulness.[35]

California law provides that any violation of the ADA would also constitute a violation of California civil rights laws concerning disability discrimination. If litigation is pursued, there would be other causes of action, including trespass, negligence, nuisance, and intentional infliction of emotional distress.

7. Discrimination

D.14-12-078 (p.3) states, "We generally allocate opt out service costs (e.g., costs

[31] PPH speaker Ms. Moskow 10 RT 1014: 5-9
[32] D.14-12-078 Finding of Fact 20, P.77
[33] IEQ Indoor Environmental Quality; a project of the National Institute of Building Sciences (NIBS) with funding support from The Architectural and Transportation Barriers Compliance Board (Access Board) http://access-board.gov/news/ieq.htm. (emphasis supplied)
[34] Moreover, California prides itself for going beyond the ADA in its concern for persons with disabilities. (Government Code Section 12926.1)
[35] See, Opening Brief of Marin County, 11-12.

for manual meter reading) to opt out customers..." Some homes still have analog meters because the homes' wiring is incompatible with smart meters. These customers are not being charged fees to retain an analog meter. This is both discriminatory and a recognition of potential hazards created by smart meter installation.

Full public disclosure on smart meter failures is warranted. Approximately 9.4 million PG&E smart meters were deployed by the end of June 2012. PG&E reports[36], 3,738,000 meters were not "activated" and still required meter reading. Smart meters are failing, and requiring ongoing maintenance by meter readers. Fees for the cost of meter readers, like infrastructure costs for the smart meter program, must be allocated equitably. D.14-12-078 enables discriminatory fiscal practices.

Ruling against the right of business customers to avoid a smart meter, whereas residents have that right, is discrimination against business customers.

8. Property Law

Property owners have a vested, existing property right to: be safe and to enjoy their private lives within the sanctity of their homes; not to have EMR devices installed on their homes and property; and not to be bathed in pulsed EMR emanating from their property. This right is rooted in the California Constitution,[37] our democratic beliefs, and long standing property and nuisance statutory and case law[38].

A radiation transmission device owned by someone other than the owner of the home to which it is attached is a "use" in the property of the homeowner.[39] If such use is with the consent of the property owner the use is a license or an easement.[40] If it is neither, it is a trespass or a nuisance.[41] If the use is for a governmental purpose, it is a

[36]Twelfth Semi-Annual Assessment Report on the Deployment of Pacific Gas and Electric Company's Advanced Metering Infrastructure Program and Twelfth Quarterly Report on the Implementation Progress of the Smart Meter Program Upgrade. October 1, 2012, p. 2
[37] Cal. Const. Art 1, §1
[38] Cal. Civ. Code §§ 654, 658, 662, 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 133, p. 453
[39]Cal. Civ. Code § 801(6), 803, 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 382, p. 446
[40]12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, §§ 429, 430, pp. 500-501
[41] 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 693, p. 1018, 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 133, p. 453

taking, requiring due process of law, for which compensation must be made.[42] In any of these cases the import is the same, one cannot seize a use in the property of another without the owner's consent, that is, an easement, or the payment of compensation in a proceeding in eminent domain.

Smart meter fees imposed on those who do not want the living spaces of their homes subject to EMR from smart meters attached to their homes or installed on their property violates these core principles of private property ownership. For many, smart meters are adjacent to living areas, the thickness of a wall away, and when there are multiple meters attached to the wall, the unwelcome radiation exposure is multiplied accordingly. Smart meters are a nuisance, a means of illegal trespass, and an unconstitutional interference with owners' peaceful use and enjoyment of homes and properties.

Neither PGE nor the CPUC has the right to use private property for installation of smart meters without the owner's consent or due process of law. If non-consenting property owners retain their property right of excluding smart meters, but must pay a fee to do so, this constitutes a de facto seizure of private property in violation of the above principles.

9. Community Opt Out

Communities have a legal responsibility, and the legal and vested power to protect residents from harm and the threat of harm[43]. At least fifty seven California municipalities, (cities and counties) have asked for some type of relief from smart meters, including no fee opt outs, smart meter health and safety review, and a dozen criminalized smart meter installation.

Community opt out was part of the scoping memo in this proceeding. Testimony on community opt out was granted deferment by the ALJ.[44] D. 14-12-078 rules against

[42] U.S. Constitution, Amend. V, Cal. Const. Art 1, § 19.
[43] For legal statutes see City of Sebastopol ordinance here: http://emfsafetynetwork.org/wp-content/uploads/2013/10/DRAFT-Smart-Meter-Moratorium-Ordinance-For-2-21-2013-.pdf
[44] On 9/28/2012 ALJ Kikugawa email granted the Motion regarding community opt out testimony a deferment

community opt out, and closes the proceeding. This legal conclusion is wrong because community opt out testimony remains to be taken.

The decision that communities and multi-unit dwellings cannot opt out is a false and misleading conclusion. The CPUC is attempting to sweep public participation under the rug, deny community rights, restrict participation, and apparently expects no pushback.

A "pay to opt out" program does not protect customers in multi-unit housing who have co-located antennas in multiple meter installations. The record is lacking information that would serve the CPUC to make better legal decisions. Intervenor testimony on community opt out is warranted and necessary.

10. Cost Causation

D.14-12-078 forces the customers to subsidize a major failure of the smart meter program. Major problems with the smart grid modernization have been ignored and downplayed to protect the project and utility profits. The responsibility for the cost of customers refusing smart meters should rest with the true cost causers: the utilities and the CPUC who did not issue a moratorium on the deployment despite thousands of complaints. It was President Peevey, the assigned Commissioner to A.11-03-014 (and relater matters) who assured PGE the Commission would delay long enough for PG&E to complete their deployment.

The Commission, in concert with the utilities, forced smart meters onto customers. There is no federal[45] or state law that mandates all utility customers must have smart meters, or pay not to have smart meters.[46] D.09-03-026 which approved smart meters is both flawed and negligent because it was silent on customer rights of choice; never fully vetted or disclosed the technical specifications of the EMR meters; failed to file a California Environmental Quality Act (CEQA) exemption;[47] never held public participation hearings; failed to obtain ratepayers informed consent; and ignored their no

[45] PG&E witness James Meadows, 3 RT 469: 7-9
[46] Exhibit EMF-1 6: 6-8
[47] PG&E witness James Meadows 3 RT 463:14-20

and low cost EMF policy, which included EMR.[48]

The purpose of opt out fees is protection of the smart grid project and increased utility profits. A utility survey[49] showed the more money people were forced to pay to opt out, the fewer people would opt out. The utilities do not want customers to opt out because the smart meter mesh network relies on customers participating.

A "pay to opt out" program is coercion by exaction, an unlawful taking. Where the process also conceals project failings from full public scrutiny, it is unlawful and demonstrable cronyism.[50] The CPUC reported to the Governor that it did an investigation of smart meter fires, but did not make the report available to the public.[51] On November 11, 2014, Network sent a records request to obtain it, plus additional information. The CPUC has ignored the records act request.

PG&E was already provided $128.8 million in risk-based allowance, included in the original smart meter program.[52] D.14-12-078 allows utilities to recover $60 million dollars[53] or more for the opt out program. The decision states, "customers have remedies available for excessive or improper expenditures. Similarly, intervenors have various recourses if they become aware of such excesses going forward."[54] Is the Commission willfully blind to these excesses? If shareholders paid for opt out costs, more accountability in the future would be assured.

11. Conclusion

The Commission should reopen the proceeding to rescind and refund smart meter opt out fees; ban co-located antennas in multiple meter installations; hold evidentiary hearings on: smart meter health and safety impacts, community, and commercial rights.

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[48] Exhibit EMF-1 6: 9-12

[49] SDGE survey see p. 1-2 Network Reply Comments 12/2011 http://emfsafetynetwork.org/wp-content/uploads/2012/11/156140.pdf

[50] President Peevey is under scrutiny for alleged favoritism toward PGE.

[51] http://www.cpuc.ca.gov/NR/rdonlyres/2F5149C6-885A-4211-8CBA-A4F88F02CEA7/0/SmartGridAnnualReport2013final.pdf

[52] Exhibit EMF-1 5: 22-23 to 6:1-3

[53] D.14-12-078 Summary p. 2

[54] D.14-12-078 p.48-49

The CPUC must take these actions to ensure safe and reliable utility service at reasonable rates to California customers or fail in its stated mission.

Dated January 22, 2015, at Sebastopol California.

/s/

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VERIFICATION

I, Sandi Maurer, represent EMF Safety Network and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Dated January 22, 2015, at Sebastopol California.

/s/

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