

**Before the
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA
San Francisco, CA**

Second request for
Commission review of the
status and any "disposition"
by the Energy Division of
PG&E Advice Letter 3278-
G/4006-E

)
) **EDWARD HASBROUCK,**
) **protester of PG&E Advice**
) **Letter 3278-G/4006-E and**
) **PG&E customer**
)

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26 May 2012

Pursuant to Rule 7.7.1 ("Review of Industry Division Disposition") of the California Public Utilities Commission (CPUC) rules of procedure as contained in General Order 96-B, I hereby request review by the Commission of the status and effectiveness (or lack thereof) of Pacific Gas & Electric Company (PG&E) Advice Letter 3278-G/4006-E, and of any action which is considered or purported by the Commission and/or the CPUC Energy Division to constitute a "disposition" by the the Energy Division of Advice Letter 3278-G/4006-E.

1. Summary of prior procedural history

The history of PG&E Advice Letter 3278-G/4006-E and the actions taken with respect to that Advice letter, to the extent they were known to me as of 28 March 2012, were summarized in my "Request for Commission review of the status and any 'disposition' by the Energy Division of PG&E Advice Letter 3278-G/4006-E", which I filed with the CPUC and served on PG&E and the e-mail addresses on the related Service List A1103014 on 28 March 2012.

My initial request for review of 28 March 2012 – including the summary of the procedural history, all of the arguments raised therein, and all of the requests for Commission action – is hereby incorporated by reference and renewed as though restated in full.

I have neither withdrawn nor abandoned my initial request for review, which remains pending before the Commission. This second request for review supplements, but does not replace, my initial request for review. Pursuant to the Commission's rules, the Commission is required to place both my initial request for review and this second request for review on its calendar for action, and the Energy Division is required to prepare proposed resolutions for Commission action with respect to each of these two requests for review.

2. Additional actions, information, and objections to the Energy Division's actions and inactions

On 28 March 2012, I served my request for Commission review on the CPUC and PG&E by USPS, e-mail, and fax, and on the e-mail addresses on Service List A1103014. On 19 April 2012, I renewed my request for review verbally before the Commission at its business meeting, and hand-delivered a copy to the Commission's secretary during the public comment period.

On 4 April 2012, I made a request to Ms. Elizabeth Dorman of the CPUC, both by phone and by e-mail, for copies of all CPUC records including communications within the CPUC or between the CPUC and PG&E, regarding this advice letter, my protest, and/or my request for review. Pursuant to the Public Records Act, the CPUC was required to respond within 10 days, but did not do so. On 27 April 2012, I received a much-belated response to my request. This response contained no record whatsoever of my request for review, the receipt thereof, or any action with respect thereto. Either the CPUC had destroyed or lost all record of my request for review, including my presentation of it directly before the Commission at its business meeting and hand delivery of a copy of it to the Commission's secretary, on camera, or the CPUC violated the Public Records Act by failing to disclose those records in response to my request.

On 5 April 2012, I received an e-mail message from Ms. Dorman which did not mention my pending request for review or my pending requests for assistance in exercising my rights to public participation, but which reiterated that, as I had already been informed by the office of the CPUC Public Advisor, "other Commission Staff have been instructed to refer you back to me".

This directive to the staff of the office of the Public Advisor not to respond to my requests for their assistance, but to refer them to one of the other CPUC staff people in my dealings with whom I was requesting the assistance of the Public Advisor, constituted gross malfeasance and an unconscionable interference with the ability of the office of the Public Advisor to fulfill its duty to assist the public in exercising their rights of participation.

The CPUC's 27 April 2012 response to my request for public records, While untimely and incomplete, did include clear evidence that the portion of the Advice Letter which I had protested (1) was proposed not had the initiative of PG&E, and not during the preceding which was purportedly the basis for it, but was included as a result of a suggestion made to PG&E by a CPUC staff member after that decision was made by the Commission, (2) was explicitly and intended and directed at utility customers who did not actually indicate that they "did not want a SmartMeter" as per the Commission's decision, but who "do not choose", and (3) was prompted by physical barriers to access to property, not by any regulatory concern.

According to the records disclosed by the CPUC in response to my request, the first suggestion of the language in the Advice Letter which I later protested came in an e-mail message of 13 February 2012 from Ms. Marzia Zafar of the CPUC staff to Cliff Gleicher of PG&E: "Hey Cliff, In your advice letter, you may want to add language about those customers who do not choose. Either they are automatically opting in or out or you may want to add penalty language or disconnection language. Just a thought after looking at the meter that was under lockdown."

Nothing in PG&E's proposal, the prior proceeding, the factual record, or the Commission's decision included "penalties" for customers who do not choose, or for "lockdown" of property. This suggestion, and the language included in the Advice Letter as a result, were clearly outside the scope of the proceeding, the decision, or any factual record before the CPUC.

On 16 May 2012, I received a copy by e-mail of a letter dated 15 May 2012 from Mr. Edward Randolph, Director of the CPUC Energy Division, to Mr. Brian K. Cherry of PG&E, Containing a purported "approval" and disposition of the Advice Letter. (Although the letter is dated 15 May 2012, the cover e-mail message was sent 16 May 2012 and states explicitly that, "The hardcopy of the letter will be sent out today [to] Mr. Cherry.")

In his letter of 16 May 2012, Mr. Randolph claims that, "On March 29, 2012, Energy Division withdrew without prejudice the March 19 disposition letter". However, the CPUC's rules do not provide for withdrawal of a disposition, once issued, by the Division. And notice of any such action, even if permitted by the CPUC's rules or authorized by Commission resolution, as this one was not, would have been required to be served the same day on me, on PG&E, and on the other parties to the corresponding proceeding. Notice of the CPUC's purported withdrawal of its disposition was first provided to me by e-mail on 5 April 2012, a full week

after the purported date of the "withdrawal". I forwarded this e-mail message to the e-mail addresses on Service List A1103014. But so far as I can tell, the CPUC did not serve anyone with notice of a purported "withdrawal" (or any other action) on 29 March 2012, and never served the other parties on the Service List as would have been required for any valid action.

In its response of 27 April 2012 to my request for all records related to this Advice Letter, the CPUC produced no record of any such (purported) withdrawal or of any service of same to anyone at any time. Records of such a notice of a formal action could not have been exempt from disclosure if requested pursuant to the Public Records Act. Either there was no such (purported) withdrawal or service thereof, there was but the CPUC has destroyed or lost all records of it, and/or the CPUC has violated the Public Records Act by failing to disclose non-exempt records responsive to a properly made request.

Accordingly, the 29 March 2012 withdrawal of the purported "disposition" by the Energy Division claimed in Mr. Randolph's letter of 16 May 2012 is null and void and just be rejected as (1) factually false and unsupported by any evidence, (2) contradicted by the CPUC's records as disclosed in response to my request, (3) not having been properly and timely served on me, PG&E, and the relevant Service List, (4) not authorized by the CPUC's rules, and (5) not within the Division's jurisdiction once my request for review of the Advice Letter and the Division's actions and inactions including any purported "disposition" had been filed, removing the matter from the jurisdiction of the Division and requiring it to be decided by the Commission.

The new purported "disposition" claimed in Mr. Randolph's letter of 16 May 2012 is similarly void for lack of timeliness and lack of jurisdiction by the Energy Division once the Advice Letter was the subject of my request for review by the Commission.

Whether any claimed withdrawal by the Energy Division of a purported Energy Division approval of the Advice Letter was or could be "without prejudice", or whether the Energy Divisions of late service of PG&E's reply to my protest had or could cure the procedural errors in prior lack of service by PG&E and the CPUC, as claimed by Mr. Randolph in his letter of 16 May 2012, are matters to be determined by the Commission, not the Division. In fact, any action with respect to the Advice Letter while a request for review was pending and while the underlying Advice Letter was automatically suspended by CPUC rule would prejudice my rights and the rights of the public to review of the Division's actions. This is especially true where, as in this case, the Advice Letter had been designated as effective immediately, and actions had been taken by PG&E, by ratepayers, and by property owners on the basis of the purported approval.

Since no valid, timely, properly served disposition was ever issued by the Energy Division in accordance with the CPUC's rules, the current status of the Advice Letter is that it is suspended by action of the CPUC's rules pending disposition by the Commission through its consideration of my two requests for review of the Energy Division's actions and inactions, and adoption of a resolution by the full Commission at a future business meeting.

Even if Mr. Randolph's letter of 16 May 2012 had been timely issued and served, it would have been incorrect and properly subject to reversal on review by the Commission.

Mr. Randolph's letter of the 16 May 2012 claims that, "D. 12-02-14 and prior decisions presumed that PG&E will have access to replace traditional meters and/or smart meters." That claim is (1) unsupported by any factual record, (2) factually disputed, and (3) irrelevant.

Property rights including the terms of easements and/or franchises are outside the jurisdiction of the CPUC, and entirely independent of CPUC regulatory approval. The CPUC may assume, for the purposes of considering whether to grant regulatory approval for a powerline, The utility will obtain the necessary rights of access to install and maintain the power line, if approved, on the approved route. But CPUC approval does not create a right of access To others' property, whether private or municipal, for the utility to install or maintain the powerline.

Similarly, whether the CPUC has granted regulatory approval for PG&E to install smart meters on premises to which it has obtained access rights – by means independent of and outside the jurisdiction of the CPUC, such as purchase or rental of easements or municipal grants of franchise rights – is independent from whether PG&E has, in fact, obtain such rights for particular premises, or from the question of who owns such rights to particular premises or on which premises (PG&E-owned premises, customer premises, municipal premises, or premises owned by third parties such as landlords) "SmartMeters" are to be installed.

The Advice Letter proposes to make a factual determination as to the intentions of customers, and whether they actually "do not wish to have a SmartMeter" (the category of customers defined by the decision and to whom any valid Advice Letter or "SmartMeter" opt-out tariff would be limited), on the basis of whether "reasonable access" (reasonable being undefined) is granted to PG&E to install a "SmartMeter".

Mr. Randolph's letter of 16 May 2012 claims that, "Mr. Hasbrouck's protest raises issues regarding physical access to meters, issues regarding determination of customer desire to use or not use a smart reader, and the potential for PG&E to allow third parties to use the smart meter mesh network facilities. All of these issues are outside the scope of this Advice Letter filing." In fact, all of these issues are outside the scope of the prior proceeding and Commission decision, but within the scope of the Advice Letter and the full proceeding which would be required in order to determine the factual validity of the proposed determination of customer intent.

Whether it is "reasonable" to grant PG&E access to particular premises for particular purposes is obviously dependent on whether PG&E actually has a right to such access. Whether PG&E has such rights obviously depends on which premises are to be used (which depends in part on whether "SmartMeters" are to be installed on or in homes or on utility poles), what purposes they are to be used for (since easements and other access rights are often purpose-limited), who owns which rights to customer premises (which depends in part on relationships between utility customers and property owners), and on rules or policies for use of municipal property for these purposes (which for purposes including wireless data network infrastructure on municipal property in the City and County of San Francisco were enacted by the voters through Proposition J – with which PG&E's "SmartMeters" do not comply – in October 2007).

The CPUC cannot itself decide, but can only consider as a factual question, through an appropriate full fact-finding proceeding, who owns what access rights to what premises.

Resolution of these factual questions, which can only be accomplished through a full CPUC proceeding, is essential to determine the factual validity of the determination proposed in the Advice Letter as to which customers “do not wish to have a SmartMeter”, as opposed to other reasons why access to particular premises may not be or have been granted.

3. Reservation of rights and request for leave to file supplemental arguments

While I believe that any consideration by the Commission of evidence or arguments from PG&E, the Energy Division, or other parties with which I was not timely served, and/or with which I was not provided with copies in response to my request for public records, would be improper, I reserve the right to submit additional factual and legal evidence or arguments if the Commission decides to consider any such materials or in response to any additional information disclosed in response to my still-pending and only partially answered request for CPUC records.

To the extent that any such filing may require leave from the Commission, I hereby request such leave to file supplemental arguments. I also request that the Commission postpone any decision on this request, other than to suspend the Advice Letter pending Commission review, until the CPUC has completed its response to my request for records of its actions and I have been afforded adequate time to respond to any such disclosures.

Respectfully submitted,

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26 May 2012

CERTIFICATE OF SERVICE

I, Edward Hasbrouck, certify that I am serving this request for Commission review today by e-mail, fax, and depositing copies in the U.S. Mail, postage paid, to each of the e-mail addresses, fax numbers, and postal addresses below:

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CPUC e-mail service list A1103014 , as retrieved 26 May 2012 from
<http://docs.cpuc.ca.gov/published/service_lists/A1103014_79792.csv>

Edward Hasbrouck
28 March 2012