

CITY OF MONTEREY

TO: City Manager
FROM: Hans Uslar, Assistant Director Plans and Public Works
DATE: January 3, 2011
SUBJECT: Discussion on PG&E SmartMeter Technology and Consideration of Possible Actions

RECOMMENDATION

Staff recommends the at the City receive public comment but take no action at this time to ban or impose a Moratorium on the installation of Pacific Gas and Electric (PG&E) SmartMeters for reasons outlined within.

Alternatively, Council could choose one of the following two options:

- Pass a resolution declaring the City Council's position pertaining to SmartMeters and related equipment and demanding a halt of the installation of SmartMeters for those accountholders who prefer to opt out of the SmartMeter program; or
- To impose a temporary moratorium on the installation of SmartMeters and related equipment.

POLICY IMPLICATION

On July 20, 2006, the California's Public Utilities Commission (CPUC) approved PG&E's request to install advanced metering infrastructure (or SmartMeters) throughout its territory, and to upgrade all of its 5 million electric meters and 4 million gas meters over the next five years.

The CPUC has exclusive jurisdiction over the regulation of public utilities. Accordingly, legislative actions by the City of Monterey to stop the installation of SmartMeters in the City will likely be unenforceable.

FISCAL IMPLICATION

Pacific Gas & Electric as well as the CPUC have advised municipalities that the cities have no legal standing to stop the installation of SmartMeters. Challenges to SmartMeters have gone before the CPUC and the challenges were unsuccessful. Accordingly, SmartMeters can legally be installed in cities, unless the CPUC takes further action. If Council should choose to impose restrictions on the installation of SmartMeters, it is possible that the City of Monterey would either have to sue to enforce the restriction or would be sued. However, staff has not seen any reports of lawsuits filed against other agencies that have imposed moratoria. Nor is it aware of other agencies that have sued to keep SmartMeters from being installed in their jurisdiction. Although, some such lawsuits are likely, in places like San Francisco or Watsonville, in the near future.

Should Council impose a moratorium, staff will need to monitor, and if necessary, start an administrative citation process against the violators of the moratorium.

ENVIRONMENTAL DETERMINATION

The presentation and discussion on SmartMeters and the consideration of a moratorium does not constitute a project requiring a CEQA review.

DISCUSSION

Throughout Northern California, PG&E has installed approximately two-thirds of the 6+million electric and natural gas SmartMeters that PG&E is committed to install throughout its entire service area. On November 2, 2010, Council considered a moratorium to ban SmartMeters within the City of Monterey. At that time, Council heard a presentation from representatives of PG&E, as well as received numerous public comments pertaining to this issue; six members of the public voiced concerns, while two Monterey residents spoke in support of the SmartMeter program. At the conclusion of the meeting, Council chose not impose a moratorium and the item was tabled.

Since that time, several members of the public have contacted Council requesting that they look into the issues surrounding SmartMeter installation and have asked for a moratorium on the installation of SmartMeter technology. Their arguments focus on potential dangers to public health and welfare. Numerous publications and scientific studies were quoted and submitted to Council during public comment periods.

Council directed staff to agendize this issue during Council comments on January 4, 2011. However, as stated above and at the last City Council meeting on the issue, the CPUC has exclusive jurisdiction over the installation of SmartMeters and it is likely that the City will not be able to impose an enforceable ban or moratorium. The only real avenue is for the City to make a political statement to the CPUC that expresses the views of its citizens and asks the CPUC to reconsider. They have already denied the appeals by the City and County of San Francisco and installation has begun in the Marina District. However, see the attached article from the New York Times where some of the retired CPUC Commissioners state that the CPUC should give the citizens the ability to opt out of the SmartMeter and pay for a wired alternative.

Likewise, staff notes that the City of Monterey does not possess the necessary expertise to evaluate statements made by the public nor to evaluate the reliability and validity of the scientific sources quoted. However, the City Council should consider the following based on staff research of relevant statements, decisions, and factsheets from the CPUC, the FCC, and the World Health Organizations (WHO).

PG&E followed the process required by the State of California.

On July 20, 2006, the CPUC approved PG&E's request to install advanced metering infrastructure (AM or SmartMeters) throughout its territory and to upgrade all of its 5 million electric meters and 4 million gas meters over the next five years. PG&E, as well as other utilities operating in our State, have followed the public application process.

The CPUC considered input similar to the input communicated to our City Council.

The regulatory oversight and expertise in this matter rests with the CPUC and their staff. The CPUC is fully aware of the arguments made pertaining to perceived radio frequency and microwave radiation emissions from SmartMeters. On December 12, 2010, the Commission declined to look into the matter pertaining to electromagnetic fields (EMF). Moreover, the Commission, found that the EMF produced by SmartMeters is "far below the levels of many commonly used devices," and that the radio components of SmartMeters "are licensed or certified by the FCC," and that "it is not reasonable to re-open the Commission's review of SmartMeters for the purpose of considering the alleged health impacts of RF emission from Smart Meters".(CPUC Decision 10-12-031 December 16, 2010, pages 20-21).

Additionally, staff finds that the CPUC has a history of being very responsive to concerns about the SmartMeter program. For example, the CPUC temporarily halted the implementation of PG&E's SmartMeter once concerns out of the Bakersfield area arose that claimed that the meters were not accurate measuring energy consumption.

Other Governmental organizations have not expressed concern with the CPUC decisions.

The Federal Communications Commission (FCC) has set standards that manufactures of wireless devices have to abide by. The safety guidelines for SmartMeters and other devices such as baby monitors and cordless phones is .6 milliwatts per centimeter squared in the 902 MHz range and 1.0 milliwatts per centimeter squared at 2.4 GHz.

In the FCC issued OET Bulletin 65 Edition 97-01, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Field (pg.8)*, the agency states, "The basis for these limits is a whole-body averaged SAR threshold level of 4 watts per kilogram (4 W/kg) as averaged over the entire mass of the body, above which expert organizations have determined that potentially hazardous exposures may occur."

In August 2010, an official of the FCC issued a statement that the danger of several SmartMeters clustered together is a non-issue because they all use the same transmitter. (FCC Letter to SAGE). Staff finds no evidence that the FCC has expressed concerns regarding the SmartMeter program.

Further the FCC states in the same bulletin that the exposure to electromagnetic fields significantly diminishes with increased distance to the wireless device. Staff adds that the exposure also diminishes through the insulation of the SmartMeter through brick, stucco, plywood, drywall, etc.

Another respected voice concerning health issues is the World Health Organization (WHO). WHO is the directing and coordinating authority for health within the United Nations system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence-based policy options, providing technical support to countries, and monitoring and assessing health trends.

In the WHO's Fact Sheet No. 193, May 2010, the scientists of the WHO concluded that to date, no adverse health effects have been established for mobile phone use. Fact Sheet No 301, May 2006, concluded that local wireless network antennas do not impose

a health threat. Interestingly, the WHO explains that the human body absorbs approximately five times more electromagnetic fields from FM radios and television than from base stations or wireless networks. The reason for this can be found in the use of a lower frequency spectrum in FM radio (around 100 MHz) as to the 900 – 1800 MHz range of mobile phones. In comparison, SmartMeter devices attached to residential houses will work in the 902 to 928 MHz range. The transmitters, which will be mounted on streetlights at around 25 feet above ground, will be working in the 1.9GHz range.

To summarize, the WHO has not been able to find a negative health impact on humans as a result of the installation of wireless devices.

In July 2010, Assembly Member Huffmann, supported by our Assembly Member Monning, tasked the California Council on Science and Technology to perform an "independent, science based study that would help policy makers and the general public resolve the debate as to whether SmartMeters present a significant risk of adverse health effects." The key report findings from January 2011 state that:

- Wireless meters, when installed and properly maintained, result in a much smaller level of radio frequency (RF) than many existing common household electronic devices, particularly cell phone and microwave ovens;
- The current FCC standards provide an adequate factor of safety against known thermally induced health impacts of existing common household electronic devices and SmartMeters;
- To date, scientific studies have not identified or confirmed negative health effects from potential non-thermal impacts of RF emissions such as those produced by existing common household electronic devices and SmartMeters;
- Not enough is currently known about the potential non-thermal impacts of radio frequency emissions to identify or recommend additional standards for such impacts.
(“California Council on Science and Technology, Health Impacts of Radio Frequency from SmartMeters, page 4, January 2011”.)

The privacy of usage data is not compromised by using wireless data networks when transmitting data.

“The National Broadband Plan (NBP) recommends that consumers be able to access and control their own digital energy information. Privacy and security are critical to the success of the Smart Grid;” the NBP stresses that “security and privacy should be fundamental to both network architectures and everyday business processes. With safeguards, electric utilities should be able to conduct certain regulated activities, such as energy efficiency programs, without requiring individual affirmative consent for data disclosure.” “Senate Committee on Commerce, Science, and Transportation Hearing on Reviewing the National Broadband Plan April 14, 2010 Questions for the Record from Chairman John D. Rockefeller IV to FCC Chairman Julius Genachowski.”

However, staff also notes that a commonly accepted wisdom of the information age is that no network can be protected from cyber criminals that try to gain access.

Health impacts, as described during public comment period, cannot be confirmed.

Wireless networks, cell-phones, etc. have not been confirmed as the cause for the symptoms described by members of the public.

Staff does not dispute or invalidate the statements made by various members of the public experiencing symptoms of Electromagnetic Hypersensitivity (EHS) such as headaches, migraines, chest tightness, etc. The WHO recommends that treating physicians should focus on the treatment of the symptoms and not one's person's perceived need for reducing or eliminating Electromagnetic Field (EMF) in the workplace. In other words: while the symptoms and suffering are real, the causality cannot be found in EMF.

In conclusion, staff finds that the CPUC has acted responsibly when confronted with various issues concerning SmartMeters. The temporary halt of the program in 2009 proves that the CPUC seriously considers public input and concerns. Moreover, staff finds that the CPUC states compliance of the SmartMeter technology with the regulations set by the FCC. The WHO has issued no health warning regarding the implementation of SmartMeters and their associated technology.

Staff also recommends against a moratorium for the following concerns:

- Smart Grid is a matter of national security and environmental stewardship. The Smart Grid technology in California is part of a federal mandate that requires States to modernize and upgrade a more than 100 year old electrical distribution system. Key reasons for the mandate are to increase security from blackouts, climate change, and global competitiveness;
- The City Council of the City of Monterey should not restrict the options for those residents that are in favor of using the SmartMeter technology in order to reduce their energy usage and energy costs;
- If the Council of the City of Monterey concludes that SmartMeter technology is un-safe, will the Council subsequently ban cell phones, baby monitors, FM radios, television sets, or wireless networks as residents can argue that they experience the same negative health effects from these devices.

As a viable alternative, staff has drafted a resolution that would allow Council to express their concerns about SmartMeters, if Council chooses to do so and ask the CPUC to consider a wired meter alternative if the customer wants to pay for it.

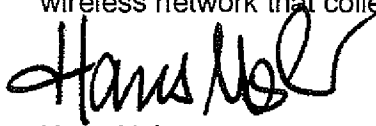
As a second alternative, which is not recommended, the City Council could pass the moratorium on SmartMeters, as attached, by a 4/5 vote. Currently, very few California local governments have imposed a moratorium.

The CPUC has opposed moratoriums in other cities due to the fact that only the CPUC has the authority to regulate public utilities, as set forth in Public Utilities Code section 701. Pursuant to Section 8, of Article 12, of the California Constitution, a city may not regulate matters, which were delegated by the State to the CPUC. Since the CPUC already approved SmartMeter use in California (CPUC Decision 06-07-027) in 2006, a moratorium by the City of Monterey would

likely be ineffectual. It is important to note is that the City's franchise agreement with PG&E acknowledges the rights of the CPUC to regulate on the City's behalf.

The City of Watsonville has passed a ban on SmartMeters; however, PG&E continued to install Smart Meters, despite the ban. Watsonville has issued citations and will likely have to go to court to enforce their ban against PG&E. Such court action will be expensive and the chance of success against PG&E will be relatively low. In a recent Council action by the City Council of the City of Sebastopol, the City Council elected to not impose a moratorium based on the possible legal implications.

Staff has also attached language to impose a 45 days moratorium on the installation and activation of SmartMeters. Activation is defined as the connection of the SmartMeter to a wireless network that collects the usage data.



Hans Uslar
Assistant Director Plans and Public Works

HU:mc

- Attachments:
1. Resolution
 2. Ordinance
 3. Agenda Report and attachments from 11/02/2010
 4. New York Times article dated 1/14/11

RESOLUTION NO. 11 – _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF MONTEREY DEMANDING PG&E HALT THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE CITY OF MONTEREY

WHEREAS, Pacific Gas and Electric Company (PG&E) is now installing SmartMeters in Central and Northern California and is installing these meters within the City; and

WHEREAS, concerns about the impact and accuracy of SmartMeters have been raised at public hearings for the City of Monterey; and

WHEREAS, problems with SmartMeters in California have been brought to the attention of the City Council of the City of Monterey, including:

- The flow of gas and electricity into homes discloses private detailed information. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of electrical power used without adequately protecting that data from being accessed by unauthorized persons and as such pose an unreasonable intrusion into resident's privacy and security interests;
- The Public still has health concerns regarding the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment, and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles;
- FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short-term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups, and doctors are calling for the use of caution in wireless technologies;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONTEREY that the freedom of choice is an important fundamental right of the citizens of the City of Monterey. The lack of an opt-out provision in the current PG&E SmartMeter Program is unacceptable. Should PG&E continue to pursue the SmartMeter Program within the City of Monterey, Council demands that PG&E implement mechanisms to allow residents to opt-out of the program and pay for the installation of a wired device. Or in the alternative, the Council would like the California Public Utilities Commission to impose such an opt-out provision for Monterey's citizens.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this _____ day of _____ 2011, by the following votes:

COUNCILMEMBERS:

NOES:

COUNCILMEMBERS:

ABSENT:

COUNCILMEMBERS:

APPROVED:

Mayor of Said City

ATTEST:

City Clerk thereof

ORDINANCE NO. _____ C.S.

AN EMERGENCY INTERM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTEREY ESTABLISHING A MORATORIUM OF FORTY-FIVE (45) DAYS ON THE INSTALLATION AND ACTIVATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE CITY OF MONTEREY OR IN, ALONG, ACROSS, UPON, UNDER, AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF MONTEREY, AND DECLARING AN URGENCY THEREOF

WHEREAS, the City of Monterey (the "City"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection; and

WHEREAS, Section 4.4 of the City Charter grants the City the authority to regulate the use of property or the conduct of persons within the City of Monterey; and

WHEREAS, the Council adopted a franchise agreement with Pacific Gas & Electric ("PG&E") by Ordinance 1317 on or about November 10, 1962; and

WHEREAS, in addition, the City retains authority under Article XII, Section 8, of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "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;" and

WHEREAS, Public Utilities Code section 2902 reserves the City's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of the public streets by a public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation;" and

WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and will be installing these meters in the City of Monterey in the very near future; and

WHEREAS, concerns about the deployment and associated costs of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to issue a ruling on June 21, 2010, for the deployment of SmartMeters in the state. The State of Hawaii Public Utility Commission also recently declined to extend a pilot project for a Smart Grid system in that state. The CPUC currently has pending before it in a petition from the City and County of San Francisco, and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated; and

WHEREAS, problems and deficiencies with SmartMeters in California have been brought to the attention of the City of Monterey City Council

WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life and energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27; and

WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and

WHEREAS, FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and

WHEREAS, the primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use time-shifting. Further, some engineers and energy conservation experts believe that the SmartMeters program, in totality, could well actually increase total electricity consumption and therefore the carbon footprint; and

WHEREAS, because the potential risks to the health, safety and welfare of Monterey residents are so great, the City Council wishes to adopt a (45) day moratorium on the installation of SmartMeters and related equipment within the Monterey City limits. The forty-five day period will allow the CPUC petition process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters; and

WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the City without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the City's Code requirement, and subjecting residents of Monterey to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and

WHEREAS, the City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEREY, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: No SmartMeter may be installed and activated in or on any home, apartment, condominium or business in the City of Monterey, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the City for forty-five (45) days from the date of this Ordinance, at which time the Monterey City Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects. Activation shall be defined as the connection of the SmartMeter to the PG&E operated wireless data exchange network.

Notwithstanding any other provisions of this ordinance, PG&E will be allowed to replace malfunctioning gas and electric meters with SmartMeters. The permission to install SmartMeter is also extended for new service connections. In any case, none of the SmartMeters shall be activated.

SECTION 2: Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Section 1-7 of the Monterey Municipal Code or otherwise as set forth in Article 2 of Chapter 1 of the Monterey Municipal Code in the discretion of the City. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

SECTION 3: The City Manager is hereby authorized on behalf of the City of Monterey to direct all City Departments, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

SECTION 4: This City Council finds and determines that: (a) there is a current and immediate threat to the public health, safety and welfare; (b) the moratorium must be imposed in order to protect and preserved the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of Monterey by preserving and improving an aesthetic and economic conditions of the City.

SECTION 5: Any provision of the Monterey Municipal Code or other ordinances of the city inconsistent herewith, to the extent of such inconsistencies and no further, is hereby suspended during this interim ordinance.

SECTION 6: If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the City Council that such portion of such ordinance be severable from the remainder and the remainder be given full force and effect.

SECTION 7: The interim ordinance is declared to be an emergency measure adopted pursuant to the provision of Section 602 of the Monterey City Charter and California Government Code Section 65858 and is necessary for preserving the public peace, health, safety and property, and the general welfare and urgency for its adoption are set forth in the findings above.

SECTION 8: This interim ordinance shall take effect and be in force immediately upon its adoption and shall remain in effect until December 17, 2010, unless otherwise modified by ordinance; and on December 18, 2010, it shall be no further in force and effect.

SECTION 9: The City Clerk is hereby directed to cause this interim ordinance to be published once in the official newspaper with fifteen (15) days after its adoption.

SECTION 10: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 11: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY
this _____ day of _____, 2011 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

Chuck Dela Salla, Mayor

ATTEST:

Bonnie Gawf, City Clerk

CITY OF MONTEREY

TO: City Manager
FROM: Hans Uslar, Assistant Director Plans and Public Works
DATE: October 11, 2010
SUBJECT: Presentation and Discussion on PG&E SmartMeter Technology and Consideration of a Moratorium Against the Installation of Gas and Electric SmartMeters

RECOMMENDATION

Staff recommends the following actions:

- That the Council receives an Informational report from Pacific Gas & Electric Company (PG&E) regarding the technology pertaining to "SmartMeter" installation and operation;
- That Council does not impose a Moratorium against the Installation of gas and electric SmartMeters for the reasons detailed below.

POLICY IMPLICATION

On July 20, 2006, California's Public Utilities Commission (CPUC) approved PG&E's request to install advanced metering infrastructure (AM or SmartMeters) throughout its territory and to upgrade all 5 million electric meters and 4 million gas meters over the next five years.

The Commission also approved voluntary Critical Peak Pricing (CPP) Programs for PG&E's residential, small commercial and industrial customers (fewer than 200 kW) with a SmartMeter. The CPP Program is designed to encourage customers to reduce their electricity usage during periods when the electric system is experiencing high electricity loads and it costs significantly more to provide customers with electricity.

FISCAL IMPLICATION

PG&E, as well as the CPUC, have advised municipalities about the legality of proposed emergency ordinances and moratoriums. If the Council decides to impose a 45-day moratorium on SmartMeters, the City of Monterey could inherit legal costs to defend a moratorium over which the City of Monterey has no jurisdiction.

ENVIRONMENTAL DETERMINATION

The presentation and discussion on SmartMeters and the consideration of a moratorium does not constitute a project requiring a CEQA review.

DISCUSSION

Throughout Northern California, PG&E has installed approximately two-thirds of the 6+million electric and natural gas SmartMeters that they have committed to install throughout their entire service area.

Installation has begun in Monterey, but only in the case of malfunctioning meters or other service calls. As of October 13, 2010, SmartMeters in Monterey were as follows:

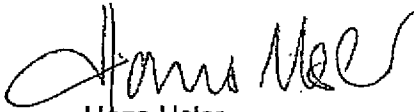
Total:	: 796
Gas	: 586
Electric	: 210

Presently installed SmartMeters are operating as regular meters, and will not be activated as SmartMeters until the mass replacement program begins in Monterey, currently scheduled for approximately February 2011. Wendy Sarsfield, Area 3 Manager for PG&E, is meeting with individuals and groups throughout the tri-County area to update communities on the project and answer questions. Ms. Sarsfield will present an overview of the program and respond to any questions and requests from the Council.

The City Council could pass the moratorium on SmartMeters, with an emergency ordinance (Attachment 1), by a 4/5 vote. This is not recommended because the CPUC has contested such moratoriums in other cities due to the fact that only the CPUC has the authority to regulate public utilities, as set forth in Public Utilities Code section 701. (See the letter to San Francisco and Fairfax, Attachments 2 & 3). Pursuant to Section 8 of Article 12 of the California Constitution, the city may not regulate matters, which were delegated by the State to the CPUC. Since the CPUC already approved SmartMeter use in California (CPUC Decision 06-07-027) in 2006, a moratorium by the City of Monterey would likely be ineffectual. Equally important to note, is that the City's franchise agreement with PG&E acknowledges the rights of the public utilities commission to regulate on the City's behalf.

The City of Watsonville passed a ban on SmartMeters; however, PG&E has continued to install SmartMeters, despite the ban. Watsonville has issued citations and will likely have to go to court to enforce their ban against PG&E. Such court action will be expensive and the chance of success against PG&E will be relatively low. Since PG&E does not have immediate plans to install SmartMeters in Monterey on a mass level, Monterey would be better served by letting the cities in which SmartMeters will be installed, fight the legal battle. In a recent Council action by the City Council of the City of Sebastopol, the City Council elected to not impose a moratorium based on the possible legal implications.

Staff has attached the language to impose a 45 days moratorium on the installation and activation of Smart Meters. Activation is defined as the connection of the SmartMeter to a wireless network that collects the usage data.



Hans Uslar
Assistant Director Plans and Public Works

HU:mc

- Attachments:
1. Emergency Ordinance
 2. Letter to City of San Francisco
 3. Letter to City of Fairfax

ORDINANCE NO. _____ C.S.

AN EMERGENCY INTERM ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTEREY ESTABLISHING A MORATORIUM OF FORTY-FIVE (45) DAYS ON THE INSTALLATION AND ACTIVATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE CITY OF MONTEREY OR IN, ALONG, ACROSS, UPON, UNDER, AND OVER THE PUBLIC STREET AND PLACES WITHIN THE CITY OF MONTEREY, AND DECLARING AN URGENCY THEREOF

WHEREAS, the City of Monterey (the "City"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection; and,

WHEREAS, Section 4.4 of the City Charter grants the City the authority to regulate the use of property or the conduct of persons within the City of Monterey; and,

WHEREAS, the Council adopted a franchise agreement with Pacific Gas & Electric ("PG&E") by Ordinance 1317 on or about November 10, 1962; and,

WHEREAS, in addition, the City retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "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;" and,

WHEREAS, Public Utilities Code section 2902 reserves the City's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of the public streets by a public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation;" and,

WHEREAS, Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and will be installing these meters in the City of Monterey in the very near future; and,

WHEREAS, concerns about the deployment and associated costs of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to issue a ruling on June 21, 2010, for the deployment of SmartMeters in the state. The State of Hawaii Public Utility Commission also recently declined to extend a pilot project for a smart grid system in that state. The California Public Utilities Commission (CPUC) currently has pending before it in a petition from the City and County of San Francisco, and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated; and,

WHEREAS problems and deficiencies with SmartMeters in California have been brought to the attention of the City of Monterey City Council; and,

WHEREAS, the ebb and flow of gas and electricity into homes discloses detailed

information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27; and,

WHEREAS, significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles; and,

WHEREAS, FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies; and,

WHEREAS, the primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use time-shifting. Further, some engineers and energy conservation experts believe that the SmartMeters program, in totality, could well actually increase total electricity consumption and therefore the carbon footprint; and,

WHEREAS, because the potential risks to the health, safety and welfare of Monterey residents are so great, the City Council wishes to adopt a (45) day moratorium on the installation of SmartMeters and related equipment within the Monterey City limits. The forty-five day period will allow the CPUC petition process referenced above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters; and,

WHEREAS, there is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the City without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the City's Code requirement, and subjecting residents of Monterey to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology; and,

WHEREAS, the City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any

facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEREY, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: No SmartMeter may be installed and activated in or on any home, apartment, condominium, or business in the City of Monterey, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the City for forty-five (45) days from the date of this Ordinance, at which time the Monterey City Council, shall consider whether to extend or terminate this prohibition in light of the then-current date on SmartMeter privacy, safety, accuracy and health effects. Activation shall be defined as the connection of the SmartMeter to the PG&E operated wireless data exchange network.

Notwithstanding any other provisions of this ordinance, PG&E will be allowed to replace malfunctioning gas and electric meters with SmartMeters. The permission to install SmartMeter is also extended for new service connections. In any case, none of the SmartMeters shall be activated.

SECTION 2: Violations of the Moratorium may be charged as infractions or misdemeanors as set forth in Section 1-7 of the Monterey Municipal Code or otherwise as set forth in Article 2 of Chapter 1 of the Monterey Municipal Code in the discretion of the City. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

SECTION 3: The City Manager is hereby authorized on behalf of the City of Monterey to direct all City Departments, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

SECTION 4: This City Council finds and determines that: (a) there is a current and immediate threat to the public health, safety and welfare; (b) the moratorium must be imposed in order to protect and preserved the public interest, health, safety, comfort and convenience and to preserve the public welfare; and (c) it is necessary to preserve the public health and safety of all residents or landowners adjacent to such uses as are affected by this interim ordinance as well as to protect all of the citizens of Monterey by preserving and improving an aesthetic and economic conditions of the City.

SECTION 5: Any provision of the Monterey Municipal Code or other ordinances of the city inconsistent herewith, to the extent of such inconsistencies and no further, is hereby suspended during this interim ordinance.

SECTION 6: If any provision of this interim ordinance is held to be unconstitutional, it is the intent of the City Council that such portion of such ordinance be severable from the remainder and the remainder be given full force and effect.

SECTION 7: The interim ordinance is declared to be emergence measure adopted pursuant to the provision of Section 602 of the Monterey City Charter and California Government Code Section 65858 and is necessary for preserving the public peace, health,

safety and property, and the general welfare and urgency for its adoption are set forth in the findings above.

SECTION 8: This interim ordinance shall take effect and be in force immediately upon its adoption and shall remain in effect until December 17, 2010, unless otherwise modified by ordinance; and on December 18, 2010, it shall be no further in force and effect.

SECTION 9: The City Clerk is hereby directed to cause this interim ordinance to be published once in the official newspaper with fifteen (15) days after its adoption.

SECTION 10: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 11: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this _____ day of _____, 2010 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

Chuck Dela Salla, Mayor

ATTEST:

Bonnie Gawf, City Clerk

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-5208

July 8, 2008

Mr. Dennis J. Herrera
City Attorney of San Francisco
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102

RE: Proposed Ordinance re: PG&E "Smart Meters"

Dear Mr. Herrera:

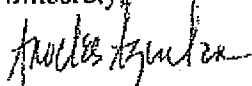
It has been brought to my attention that the City and County of San Francisco Rules Committee is scheduled to consider a proposed ordinance that would temporarily ban the installation of PG&E "Smart Meters" and would be placed on the ballot for the November 4, 2008, election. The proposed bill would further require the San Francisco Department of the Environment to assess the cost effectiveness of the PG&E "smart meters" relative to other alternatives and to provide findings by November 1, 2009, at which time, if proposed, a permanent ban may go into effect.

San Francisco's proposed ballot initiative would interfere with the California Public Utilities Commission's (CPUC or Commission) exclusive jurisdiction over the regulation of public utilities. The Commission's authority extends to a public utility's infrastructure, including the installation of meters. The CPUC's jurisdiction is established in the state Constitution and is set forth in the California Public Utilities Code and case law. Pursuant to CPUC Decision (D.) 06-07-027, PG&E has been testing and deploying its "Smart Meters" within San Francisco, and elsewhere in its service territory, since 2006. Similar initiatives are underway pursuant to Commission decisions by the other major electric utilities in the state in their respective service territories. D.06-07-027 recognizes that new advanced metering technology may evolve and orders PG&E to monitor technological developments in order to upgrade its Advanced Metering Infrastructure (AMI) system as deemed appropriate by the CPUC. 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.

Mr. Dennis Herrera
July 8, 2008
Page 2

As part of your due diligence, I would hope that your office carefully considers the legality of the City and County of San Francisco going forward with its proposed ordinance. Thank you very much for your attention to this matter. Please feel free to contact me if you have any questions.

Sincerely,



Arocles Aguilar
Assistant General Counsel
Public Utilities Commission of the
State of California
505 Van Ness Avenue
San Francisco, CA 94102

(415) 703-2969
aro@cpuc.ca.gov

PUBLIC UTILITIES COMMISSION

605 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-9298



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
Page 2

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,



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

(415) 703-2015
fri@cpuc.ca.gov

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

January 14, 2011

Calif. Agency Mulls 'Opt Out' or Wired Substitutes as Fallout Over Smart Meters Persists

By COLIN SULLIVAN AND DEBRA KAHN of

SAN FRANCISCO -- A burst of opposition to smart meters in a Northern California county appears to have turned heads in the state commission with jurisdiction over the emerging technology, with at least two prominent officials yesterday signaling they would consider letting consumers opt out.

In separate interviews, California Public Utilities Commission members Nancy Ryan and Timothy Simon said they were open to looking at new policies that would either let ratepayers reject smart meter installation outright or pursue wired rather than wireless connections.

Their comments came in reaction to public pressure from a small but vocal group of residents and lawmakers in Marin County who fear the meters might be dangerous because of the electromagnetic waves they emit. Though the science on the question appears to indicate no health threat, the Marin County Board of Supervisors passed an ordinance last week that deems the installation of smart meters a misdemeanor (*Greenwire*, Jan. 5).

The investor-owned utility that serves the region, Pacific Gas and Electric Co., has said it will continue with its rollout of smart meters despite the vote, which only applies to unincorporated areas of the county. Still, officials at the CPUC were taking the developments seriously during a monthly commission meeting here, which featured more emotional public testimony attacking the technology.

Commissioner Ryan said she was open to some sort of opt-out provision.

"I've always been of the opinion that there should be some consideration of opting out, provided people pay their full freight," she said.

Ryan added that she has spoken to California Assemblyman Jared Huffman (D), who represents Marin, about the possibility of creating a local assessment district so Marin residents can pay for wired meters. Huffman has authored legislation that would authorize wired as well as wireless

installations.

Commissioner Simon also said he was open to changes. But he also noted that only wireless installations have yet been authorized by the agency.

"The question becomes, if a ratepayer wants a wired meter, how do we work it into our rate design?" he said.

Simon added that he was sympathetic to smart meter opponents but said that their relatively small numbers should be taken into account.

"We have installed 10 million meters, and this is the only group from Marin County that has staged a protest based on radio frequency," he said. "Why is it just isolated to their group?"

Yet at least one Marin County resident present at the meeting was insistent that she had already experienced symptoms that she attributed to wireless smart meters. San Francisco resident Sudi Scull appeared before the commission yesterday to say she was hurting due to electromagnetic emissions.

"My health has taken a dramatic turn for the worse," Scull said. "I had no Christmas lights this year; I can't even play my radio. I am in some degree of migraine much of the time, and I have 40 percent chance of a stroke."

Experts weigh in

Speaking at a separate event across town, former CPUC Commissioner Diane Gruenich said the commission and PG&E may be at fault for not doing a good enough job when it came to communicating with ratepayers about smart meters and their potential dangers.

Gruenich, who recently left the commission, explained that the reason the commission authorized smart meters in the first place was to benefit the "utility side of the meter," as opposed to the consumer side. Smart meters, especially at this early stage, are much more likely to result in cost savings and better monitoring on the utility side, with the upside not yet clear for many consumers.

"There was not a good enough job of explaining," she said during an appearance at the Commonwealth Club. "It's really being used to enhance the efficiency and operation of the larger utility system."

Mark Duvall, director of electric transportation and energy storage at the Electric Power Research Institute, agreed that the negative press means utilities and regulators should take the issue seriously. But in the same breath, he argued that all research done to date on the

subject indicates there is no real or present threat.

"Yes, there are some hiccups," he said, noting that utilities had installed as many as 6,000 meters a day in some areas without much problem. "But you need to look at all the societal benefits. These are significant technological accomplishments."

As for wired versus wireless, Duvall was dismissive, saying, "It would be very costly very quickly," while Gruenich noted that the CPUC had not yet considered the alternative.

"I do know that we don't have any cost estimates of what that would involve," she said. "I don't even know if that's technologically feasible."

In subsequent interviews, both Duvall and Gruenich admitted the issue is not likely to go away. Just as important is a shifting political dynamic, as California Gov. Jerry Brown (D) may move soon to appoint someone like former California Energy Commission Commissioner John Geesman as the new president of the agency to replace Michael Peevey, who many view as sympathetic to the investor-owned utilities he oversees.

Geesman, for his part, has been downright hostile to PG&E since leaving the CEC, blogging extensively last year against the utility's attempt to stifle community power in Marin under a ballot proposition that ultimately failed on the June 2010 ballot. He has refused to comment on his possible appointment.

Neither Duvall nor Gruenich would speculate on the new direction of the commission under Brown. But Gruenich acknowledged that the new president, if there is one, will have to deal with smart meters.

"If consumers do not see the value in implementing smart meters, we're going to see some problems," she said. "This is a significant issue."

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