



FILED

06/20/19
03:23 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and Ordering Pacific Gas and Electric Company to Appear and Show Cause Why It Should not be Sanctioned for Violations of Article 8 and Rule 1.1 of the Rules of Practice and Procedure and Public Utilities Code Sections 1701.2 and 1701.3.

Investigation 15-11-015

**ASSIGNED COMMISSIONER'S AMENDED PHASE II
SCOPING MEMO AND RULING**

This Amended Phase II Scoping Memo and Ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

1. Procedural Background

The Commission opened this investigation (OII) on November 23, 2015, to determine if certain e-mail communications between Pacific Gas and Electric Company (PG&E), Commission decisionmakers, and staff constituted improper *ex parte* communications that violated Rule 1.1 of the Commission's Rules of Practice and Procedure and Pub. Util. Code §§ 1701.1 and 1701.3.

Decision (D.) 18-04-014 adopted the settlement agreement between PG&E, the City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates, the Safety and Enforcement Division, and The Utility Reform Network (collectively, the Parties).

But D.18-04-014 did not close this proceeding. During negotiations that led to the adoption of D.18-04-014, on September 17, 2017, PG&E disclosed additional e-mail communications between itself, Commission decisionmakers, and staff. As such, D.18-04-014 ordered that this proceeding remain open so that the Commission could consider whether these newly disclosed e-mail communications violated the *ex parte* rules set forth in the Commission's Rules of Practice and Procedure.

Following months of discovery and unsuccessful settlement discussions, a prehearing conference (PHC) was held on March 15, 2019, to discuss the issues of law and fact, determine the need for hearings, and consider a schedule for resolving the matter. Following the PHC, I issued the Phase II Scoping Memo on April 18, 2019.

After the issuance of the Phase II Scoping Memo, the parties engaged in further discovery in which PG&E produced additional documents in response to Data Requests propounded by the Public Advocates Office and the Safety and Enforcement Division. As a result of their efforts, on May 15, 2019, the parties filed a *Motion to Adopt Joint Evidentiary Record (Motion)* which resulted in the production of more records than what I thought would be within the scope of Phase II. In the *Motion*, PG&E explained that it came across 97 documents (e -mails and hard copy records) following its search of the e-mail accounts of Brian Cherry, Michael Peevey, Timothy Simon, Frank Lindh, Susan Kennedy, and Dan Richard, as well its search of hard copy documents collected from Thomas Bottorff, Brian Cherry, and Trina Horner. The 97 documents have been entitled *Joint Evidentiary Record*, a hard copy of which were delivered to the assigned Administrative Law Judge (ALJ), Robert M. Mason III.

Because of the number of documents produced, I find it necessary to amend the scope of Phase II.

2. Issues

The issues to be determined are:

1. How many documents in the *Joint Evidentiary Record* constitute *ex parte* communications?
2. Did any of these *ex parte* communications violate Rule 1.1 and/or Article 8 of the Commission's Rules of Practice and Procedure?
3. Should PG&E be fined and/or penalized if the Commission determines that PG&E's *ex parte* communications identified in response to Issue Nos. 1 and 2 violated Rule 1.1 and/or Article 8 of the Commission's Rules of Practice and Procedure?
4. If the Commission determines that PG&E should be fined and/or penalized for engaging in *ex parte* communications that violated Rule 1.1 and/or Article 8 of the Commission's Rules of Practice and Procedure, what is the total monetary fine and/or penalty that should be imposed on PG&E pursuant to Pub. Util. Code §§ 2107 and 2108?
5. Besides monetary fines and/or penalties, if the Commission determines that PG&E's *ex parte* communications violated Rule 1.1 and/or Article 8 of the Commission's Rules of Practice and Procedure, should the Commission impose any additional sanctions or punishments on PG&E? If so, what additional sanctions or punishments should be imposed?
6. Did PG&E engage in any other conduct regarding the *ex parte* communications that should subject PG&E to a fine and/or penalty? If so, what was PG&E's other conduct and what Commission rule, order, decision, or statute did PG&E's conduct violate?
7. If the Commission determines that PG&E engaged in any other conduct regarding the *ex parte* communications that

should subject PG&E to a fine and/or penalty, how should the fine and/or penalty be calculated?

3. Need for Evidentiary Hearing

The parties met and conferred regarding the need for evidentiary hearings. On April 26, 2019, they filed and served their *Joint Report Regarding Evidentiary Hearings* and agreed that evidentiary hearings would not be necessary as the parties intended to reach an agreement regarding the contents of a proposed joint record.

As the parties are now engaged in settlement discussions the schedule is revised below.

4. Schedule

Parties submit a proposed joint evidentiary record, consisting of e-mails and material proposed to be included in the resolution of the proceedings, and stipulations.	May 15, 2019 (parties have met this deadline)
If they fail to reach a settlement, parties to file and serve opening briefs on the number of <i>ex parte</i> violations at issue, and the appropriate fines and/or penalties, as well as any other sanctions or punishments	June 28, 2019
Parties to file and serve reply briefs	August 2, 2019
Matter submitted	August 2, 2019 (date reply briefs are filed and served)
Presiding Officer's Decision	[no later than 60 days after submission per Pub. Util. Code § 1701.2(d)]

The assigned ALJ has the authority to adjust this schedule for good cause.

The proceeding will stand submitted pursuant to the schedule identified above.

In light of the complex nature of this proceeding, it will not be resolved within 12 months of the proceeding's inception as required by Pub. Util. Code § 1701.2(i). This proceeding was opened on November 19, 2015, and over the next year the parties engaged in discussions to identify the categories of communications, as well as how many communications belonged in each category. Starting in November of 2016, the parties engaged in settlement discussions which ultimately resulted in a settlement agreement being reached in March of 2017.

But in September of 2017, and before the Commission could adopt the settlement agreement, PG&E disclosed the existence of additional e-mail communications. This new revelation resulted in the parties engaging in additional settlement discussions, and with the ALJ preparing an amended proposed decision that dealt with the proposed settlement and with the newly discovered e-mail communications. D.18-04-014 adopted the settlement agreement and opened a second phase to consider whether recently discovered e-mail communications constituted *ex parte* communications for which fines, penalties, sanctions, and/or punishments should be imposed. Since the opening of the second phase, the parties have been engaged in nearly a year of discovery and settlement negotiations that have result in the production of additional documents beyond those produced in September of 2017. The various factual and legal permutations that must be addressed and resolved as a result of these newly produced documents have made it impossible to conclude this proceeding within 12 months from its opening.

5. Category of Proceeding/*Ex Parte* Restrictions

The Commission determined that this is an adjudicatory proceeding. (OII at 8.) Accordingly, *ex parte* communications are prohibited pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

6. Intervenor Compensation

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by April 15, 2019, 30 days after the PHC.

7. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

8. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

9. Assignment of Proceeding

Michael Picker is the assigned commissioner and Robert M. Mason III is the assigned ALJ and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. Evidentiary hearings are required if the parties are unable to reach an agreement on the evidentiary record.
4. The presiding officer is Administrative Law Judge Robert M. Mason III.
5. The category of the proceeding is adjudicatory.

Dated June 20, 2019, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
Assigned Commissioner