



FILED
6-23-17
04:59 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
(Filed November 23, 2015)

**SUPPLEMENTAL BRIEFING OF PACIFIC GAS AND ELECTRIC COMPANY
REGARDING JOINT MOTION FOR ADOPTION OF SETTLEMENT AGREEMENT**

KIRK A. WILKINSON
MONICA KLOSTERMAN
LATHAM & WATKINS LLP
355 South Grand Avenue
Los Angeles, CA 90071-1560
Telephone: (213) 485-1234
Facsimile: (213) 891-8763
E-Mail: Kirk.Wilkinson@lw.com

Dated: June 23, 2017

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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On March 28, 2017, the City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates (“ORA”), the Safety and Enforcement Division (“SED”), The Utility Reform Network (“TURN”) (collectively, the “Non-PG&E Parties”), and Pacific Gas and Electric Company (“PG&E”) (together with the Non-PG&E Parties, the “Parties”) filed a Joint Motion for Adoption of Settlement Agreement (the “Joint Motion”). This supplemental briefing is filed in connection with the Joint Motion, pursuant to Judge Mason’s June 19, 2017 email ruling ordering PG&E to provide responses to four questions (the “June 19th Order”).

Accordingly, after conferring with the Non-PG&E Parties, PG&E provides the following responses:

1. ***How many violations of the Commission’s ex parte rules in Article 8 of the Rules of Practice and Procedure does PG&E admit it committed?***

PG&E has self-reported or late-noticed 12 communications that are included in this proceeding. PG&E admits that these 12 communications constitute a violation of the Commission’s ex parte rules.

The remainder of the communications at issue in this proceeding cover a wide spectrum, ranging from an email forwarding links to a website regarding a diversity award received by PG&E (Tab 1-84) to an email concerning a Commissioner’s tour of PG&E’s facilities (Tab 3-8).

More than 100 of the communications at issue in this proceeding were not included by the Commission, but were added by the Parties after a lengthy meet and confer process.¹ PG&E consented to the inclusion of these communications in an effort to efficiently resolve the issues in one proceeding.

PG&E recognizes that there remains disagreement about whether any particular communication in this proceeding involved a “substantive” issue in an open proceeding, or otherwise violated the ex parte rules, and that some communications may be more likely than others to be found to violate the ex parte rules. The Settlement Agreement between the Parties acknowledges this fact. The Joint Motion explains that the Settlement Agreement contains financial and non-financial remedies which “represent[] concessions by all Parties in the interest of resolving [the] complex and uncertain issues” presented in this proceeding.² Specifically, the Non-PG&E Parties contended that “most or all of the 164 communications at issue violated the Commission’s ex parte rules, . . . many could be found to be continuing violations, [and] . . . some of the communications could be determined to be multiple violations, either because they involve more than one decisionmaker or more than one proceeding.”³ PG&E, on the other hand, “while recognizing the seriousness of the conduct at issue, contends that most of the communications at issue are permissible information sharing from a regulated entity to its regulator, not substantive communications concerning open proceedings that constitute ex parte violations.”⁴ However, PG&E recognizes that if this matter were not settled, the Commission may find that some of the communications did violate the Commission’s rules.⁵

The amount of the total penalty in the Settlement Agreement is consistent with an outcome in which the Commission would find certain, but not all, of the communications at issue

¹ *Joint Motion* at pp. 5-6.

² *Id.* at p. 17.

³ *Id.*

⁴ *Id.* at p. 18.

⁵ *Id.*

to be violations, and that it would find one or more continuing violations. Such an outcome is similar to the outcome in the SONGS ex parte decision. As described more fully in the Joint Motion, in the SONGS decision, the Commission assessed more than 70 alleged ex parte communications and concluded that eight communications violated Rule 8.4. The Commission also assessed penalties for two violations of Rule 1.1, one of which was found to be a continuing violation.⁶ The Settlement Agreement is not, however, structured to assume that the Commission would find any particular number of ex parte violations or that any specific communications were ex parte violations. Instead, the Parties, recognizing their differing positions and the risks inherent in litigation, “arrived at a Settlement Agreement that addresses the seriousness of the conduct at issue, while recognizing their disagreement over the number of violations at hand.”⁷ Moreover, the Settlement Agreement prevents the need for a lengthy and nuanced communication-by-communication review of 164 communications, which would have limited precedential value given the upcoming changes to the Commission’s ex parte rules.⁸

2. *Under which categories (i.e., Category 1, 2, or 3) do the admitted violations fall?*

The 12 self-reported communications discussed in response to Question 1 are located in Category 2, specifically in Tabs 2-1 through 2-5, Tabs 2-9 through 2-11, and Tabs 2-21 through 2-24.

⁶ *Amended Administrative Law Judge’s Ruling Finding Violations of Rule 8.4, Requiring Reporting of Ex Parte Communications, and Ordering SCE to Show Cause Why It Should Not Also be Found in Violation of Rule 1.1 and be Subject to Sanctions for All Rule Violations*, dated August 5, 2015 (the “SONGS Ex Parte Proceeding”) at p. 5; *see also Joint Motion* at pp. 19-20.

⁷ *Joint Motion* at p. 19.

⁸ *See id.* at p. 21.

3. *Please provide a list or index which details which exhibits correspond to each violation to which PG&E admits.*

As noted, the 12 self-reported communications discussed in response to Question 1 are part of Category 2. For each of these communications, the record contains: the Tab Email that either is or describes the communication, the Parties' Stipulation regarding the communication and PG&E's Data Request Response concerning the communication. The below table identifies the pages in Exhibit 2 at which the Tab Email, the Stipulation, and the Data Request Response for each communication are located.

Communication	Tab Email	Stipulation for Tab	Data Request Response
Tab 2-1	Ex. 2-0009	Ex. 2-0012	Ex. 2-0015
Tab 2-2	Ex. 2-0019	Ex. 2-0021	Ex. 2-0023
Tab 2-3	Ex. 2-0027	Ex. 2-0033	Ex. 2-0035
Tab 2-4	Ex. 2-0039	Ex. 2-0041	Ex. 2-0043
Tab 2-5	Ex. 2-0046	Ex. 2-0048	Ex. 2-0051
Tab 2-9	Ex. 2-0066	Ex. 2-0068	Ex. 2-0070
Tab 2-10	Ex. 2-0073	Ex. 2-0075	Ex. 2-0077
Tab 2-11	Ex. 2-0080	Ex. 2-0082	Ex. 2-0084
Tab 2-21	Ex. 2-0299	Ex. 2-0301	Ex. 2-0303
Tab 2-22	Ex. 2-0307	Ex. 2-0312	Ex. 2-0314
Tab 2-23	Ex. 2-0318	Ex. 2-0325	Ex. 2-0327
Tab 2-24	Ex. 2-0331	Ex. 2-0336	Ex. 2-0338

4. *Were any of the violations, that PG&E admits it committed, continuing violations? If so, set forth the number of days for each continuing violation.*

The Settlement Agreement acknowledges that there is a disagreement between PG&E and the Non-PG&E Parties regarding whether any violation is a continuing violation and includes a financial remedy that "contemplates a potential financial outcome in which one or more continuing violations might be imposed if this case were to be fully contested."⁹ PG&E is not, however, admitting that any particular violation is continuing, as this is a legal issue that

⁹ *Id.* at p. 22.

would be decided by the Commission if there were no settlement. As the Parties indicated in the Joint Motion, while the Commission has reserved the right to set new precedent in this area, no prior Commission precedent has found a violation of Rule 8.4 to be a continuing violation.¹⁰

Respectfully Submitted,

By: /s/ Kirk A. Wilkinson
KIRK A. WILKINSON

KIRK A. WILKINSON
MONICA KLOSTERMAN
LATHAM & WATKINS LLP

355 South Grand Avenue
Los Angeles, CA 90071 1560
Telephone: (213) 485-1234
Facsimile: (213) 891-8763
E-Mail: Kirk.Wilkinson@lw.com

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Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

¹⁰ *Id.*