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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation and Order to Show Cause on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Locate and Mark Practices and Related Matters.

Investigation 18-12-007

**ADMINISTRATIVE LAW JUDGE'S RULING ON
REDACTION OF INFORMATION IN
THE INVESTIGATIVE REPORT OF THE COMMISSION'S
SAFETY AND ENFORCEMENT DIVISION**

Summary

This ruling addresses the appropriate scope of redaction of information in an investigative report (and supporting attachments) prepared by the Commission's Safety and Enforcement Division (SED) regarding Pacific Gas and Electric Company's (PG&E's) damage prevention and locate and mark programs.¹ The appropriate scope of redaction is described in SED's

¹ The formal title of the report is: *Investigative Report into the Operations and Practices of Pacific Gas & Electric Company's Damage Prevention and Locate & Mark Programs* (SED Report).

December 31, 2018 pleading.² SED is directed to file and serve an updated public version of the SED Report.

1. Background

In the Order Instituting Investigation (OII) in this proceeding, the Commission stated the following:

Fundamentally, the public has the constitutional right to scrutinize Commission business,³ which is undertaken on behalf of the public. In that vein, the Commission has the discretion to disclose investigation records under Section 583 of the Public Utilities Code.

The public interest in transparency in this matter of critical public safety significance outweighs PG&E's interest in maintaining the confidentiality of the investigation records, unless PG&E can provide a valid legal reason for maintaining confidentiality of such records. The one exception to this is names of witnesses and residence addresses. Those items shall be redacted as a matter of course. We also provided some minimal general information in this order that we find should be made public, such as the names of PG&E consultants and their general findings.

The Commission expects to release SED's report and all supporting attachments publicly after PG&E has provided any objections it has to specific material in the report that it contends merits confidentiality under the law and therefore

² *Response of the Safety and Enforcement Division to Pacific Gas and Electric Company's Proposed Redactions to the Safety and Enforcement Division's Investigative Report (Confidential)* (SED Response).

³ See Cal. Const. Art 1, Section 3(b)(1).

should be redacted. PG&E's proposed redactions, supporting objections and declarations shall be due 10 days from the date this OII is issued. Parties to the proceeding shall have 5 days to respond to PG&E's proposed redactions, supporting objections and declarations. (OII at 16.)

Consistent with these directions, PG&E filed its proposed redactions and supporting information on December 24, 2018⁴, and SED responded on December 31, 2018.⁵

PG&E and SED disagree on the appropriate redactions in certain areas. Specifically, PG&E proposes that all PG&E employee and contractor names be redacted, as well as job titles, duties and physical descriptions that could be used to identify the individuals in question. (PG&E Response at 2.) SED argues that PG&E's proposed redactions are excessive, and that the names, titles and job responsibilities of more PG&E employees should be made public, particularly those with managerial or supervisory responsibilities, and those that were subject to examination under oath. (SED Response at 2-3.)⁶ In addition, SED recommends narrowing, but not eliminating, redactions related to third party information subject to a non-disclosure agreement. (*Id.* at 4.)

⁴ *Response of Pacific Gas and Electric Company to Commission Request Regarding Confidential Information Contained in Safety And Enforcement Division Investigative Report* (PG&E Response).

⁵ SED Response.

⁶ SED subsequently made an alternate proposal that the names of supervisors, managers, executives, and officers would be disclosed, but that the names and titles of staff-level employees would not be disclosed. (Transcript v.1 at 18.)

A Law and Motion Hearing (Hearing) was held on February 5, 2019, to address the proposed redactions, and parties were directed in advance to be prepared to address the basis for keeping information private or making it public, particularly the identity of witnesses.⁷

2. Discussion – Redaction of PG&E Employee Names

At the Hearing, PG&E argued that its redactions of the names and job titles and job descriptions of PG&E employees were based upon language in the OII that stated that names of witnesses “shall be redacted as a matter of course.” (Transcript v.1 at 19, citing to OII at 16.) PG&E did not make any distinction between utility employees and third-party witnesses, and it considered PG&E employees to be “witnesses” as that word is used in the OII. (*Id.* at 19.) According to PG&E, based on this language in the OII, if SED wants more names disclosed, it must file a Petition to Modify the OII, pursuant to General Order (G.O.) 66-D, Section 3.4. (*Id.* at 19-20.)⁸

⁷ The Commission’s Public Advocates Office and Office of the Safety Advocate, The Utility Reform Network (TURN), and the Coalition of California Utility Employees (CUE) are not parties to the proceeding at this time, but were allowed to specially appear at the Hearing to address the redaction issue. The Public Advocates Office generally supported the position of SED on the redaction issue. (Transcript v.1 at 28-29.) CUE argued that no employee names should be disclosed prior to the final decision resolving this proceeding. (*Id.* at 24-25.)

⁸ G.O. 66-D, section 3.4, uses the term “Petition to Modify;” the current version of Rule 16.4 of the Commission’s Rules of Practice and Procedure uses “Petition for Modification.” For purposes of this ruling these terms are equivalent.

PG&E is incorrect. Commission Resolution L-436 makes a clear distinction between witnesses and utility employees, particularly those with safety responsibilities:

Since utility employees who receive safety-related correspondence from the CPUC, or who submit such correspondence to the CPUC, are involved in activities relating to utility safety as an element of their routine employment responsibilities, and are often in positions with substantial safety management responsibilities, we do not believe such utility employees have an objectively reasonable expectation in the privacy of their identity and job classification or specification. We have reached this conclusion in prior resolutions, including L-265, L-272 and L-332. We note that G.O. 66-C § 2.5 exempts "Personnel records, other than present job classification, job specification, and salary range." Given the express exclusion of personnel information such as job classification and job specification from the personnel records exemption in G.O. 66-C, we do not consider the names, titles, and job specifications of utility employees with regulatory communications or safety responsibilities to be highly sensitive or confidential. (Resolution L-436 at 12, emphasis added.)

In this proceeding, all of the PG&E employees named in the SED Report have safety responsibilities, and eight PG&E employees were subject to examination under oath. These PG&E employees are not the same kind of witnesses as third-party bystanders or incident victims or their families, who may have a stronger interest in privacy, and whose names would reasonably be

redacted “as a matter of course.”⁹ The language in the OII referring to redaction of witness names is not applicable to the PG&E employees identified in the SED Report. While generally agreeing with SED that disclosure of higher-level management is more appropriate than disclosure of staff-level employees, PG&E (and CUE) did not identify any individual employee or employees whose names appear in the SED Report as having a specific need to keep their identity confidential, or as having a higher expectation of privacy.

We note that the OII itself disclosed several names of PG&E employees, specifically Joel Dickson (OII at 5, fn. 12), Nick Stavropoulos and Jesus Soto (OII at 9). Accordingly, it does not appear that the OII was concerned by the potential disclosure of PG&E employee names.

In addition, PG&E’s argument that a Petition for Modification is required to un-redact material in the SED Report is inconsistent with the procedures set forth in the OII itself. The OII states:

The Commission expects to release SED’s report and all supporting attachments publicly after PG&E has provided any objections it has to specific material in the report that it contends merits confidentiality under the law and therefore should be redacted. PG&E’s proposed redactions, supporting objections and declarations shall be due 10 days from the date this OII is issued. Parties to the proceeding shall have 5 days to respond to PG&E’s proposed redactions, supporting objections and declarations. (OII at 16.)

⁹ The identities of these non-employee witnesses may also be disclosed by the Commission. (Resolution L-436 at 9-10.)

The OII does not mention a Petition for Modification, but rather allows for PG&E and other parties to file and serve pleadings addressing redactions: PG&E can propose redactions, and other parties may respond to PG&E's proposed redactions. The short time provided in the OII – 10 days for proposed redactions, and 5 days for responses – is also inconsistent with the 30 days allowed for a response for a Petition for Modification (Commission Rule of Practice and Procedure (Rule) 16.4(f).) The language of the OII does not support PG&E's argument. A Petition for Modification is not required by the OII.

Accordingly, the names and job titles of PG&E employees in the SED Report should be made public, consistent with SED's December 31, 2018 Response.

3. Discussion – Redaction of Third Party Information

PG&E proposed to redact certain information subject to a non-disclosure agreement with a third party. SED proposes to keep some of this information confidential, but to narrow the redactions to make public a larger proportion of the information. (SED Response at 4.) Neither party addressed this issue at the Hearing. Based on the pleadings, SED's proposal appears to protect the information subject to a non-disclosure agreement. Accordingly, the SED Report in this area should be redacted consistent with SED's December 31, 2018 Response.

IT IS RULED that:

1. The SED Report is to be redacted as described in SED's December 31, 2018 pleading.
2. SED is directed to file and serve an updated public version of the SED Report.

Dated February 25, 2019, at San Francisco, California.

/s/ PETER V. ALLEN
Peter V. Allen
Administrative Law Judge