



**FILED**

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**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 PHASE II  
SCOPING MEMO AND RULING**

This 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. After reviewing the *Joint Status Reports*, the *Joint Prehearing Conference Statement*, and the discussion at the PHC, I have determined the issues and schedule of the proceeding to be as set forth in this scoping memo.

## **2. Issues**

The issues to be determined are:

1. How many e-mails should be included in this phase of the proceeding?
2. How many e-mails included in this phase of the proceeding constitute *ex parte* communications?
3. Did any of these *ex parte* communications violate Rule 1.1 and/or Article 8 of the Commission's Rules of Practice and Procedure?
4. 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?

5. 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?
6. 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?
7. 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?
8. 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**

Issue nos. 1, 2, and 3 are contested material issues of fact. Accordingly, evidentiary hearings are needed on these issues unless the parties can reach a stipulation on the evidentiary record. Currently, the parties are engaged in discussions where they hope to reach an agreement on an evidentiary record, and they will file and serve a joint report on April 26, 2019. If the parties have reached an agreement, the schedule set forth in Section 4.1 of this ruling will be adopted. If the parties have not reached an agreement, the schedule set forth in Section 4.2 of this ruling will be adopted. Regardless of the schedule adopted, it

may be modified by the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the Investigation.

#### 4. Schedules

##### 4.1. Schedule if the Parties Reach Agreement on the Evidentiary Record

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 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 14, 2019
Parties to file and serve reply briefs	July 19, 2019
Matter submitted	July 19, 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)]

#### **4.2. Schedule if the Parties Do Not Reach an Agreement on the Evidentiary Record**

Parties submit opening testimony and supporting exhibits	May 15, 2019
Parties submit rebuttal testimony and supporting exhibits	June 15, 2019
Evidentiary Hearings	July 8 and July 9, 2019 CPUC San Francisco, CA 505 Van Ness Avenue Hearing Room E Commencing at 9:30 a.m. each day
Parties file and serve opening briefs after conclusion of Evidentiary Hearings	August 9, 2019
Parties file and serve reply briefs 30 days after filing and service of opening briefs	September 9, 2019
Matter submitted	September 9, 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 proceeding will stand submitted depending on whether the schedule in Section 4.1 or 4.2 is adopted, unless the ALJ requires further evidence or argument.

But 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. The various factual and legal permutations that must be addressed and resolved 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](mailto: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 April 18, 2019, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker  
Assigned Commissioner