

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA



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08:00 AM

COMMISSIONER RECHTSCHAFFEN and  
ADMINISTRATIVE LAW JUDGE PETER V. ALLEN, co-presiding

	)	PREHEARING
	)	CONFERENCE
	)	
Order Instituting Investigation and	)	
Order to Show Cause on the	)	
Commission's Own Motion into the	)	Investigation
Operations and Practices of Pacific	)	18-12-007
Gas and Electric Company with	)	
Respect to Locate and Mark Practices	)	
and Related Matters.	)	

REPORTER'S TRANSCRIPT  
San Francisco, California  
May 29, 2019  
Pages 50 - 65  
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Reported by: Doris Huaman, CSR No. 10538

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PARTY STATUS GRANTED

City & County of San Francisco

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SAN FRANCISCO, CALIFORNIA

MAY 29, 2019 - 1:30 P.M.

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ADMINISTRATIVE LAW JUDGE ALLEN: On the record.

Good afternoon, everyone. This is the time and place for the second prehearing conference in Investigation 18-12-007, Order Instituting Investigation and Order to Show Cause on the Commission's own motion into the operations and practices of Pacific Gas & Electric Company with respect to locate and mark practices and related matters.

I'm Administrative Law Judge Peter Allen. With me here today is Commissioner Rechtschaffen.

Do you have any introductory words?

COMMISSIONER RECHTSCHAFFEN: I waive my right to opening statements.

ALJ ALLEN: Thank you. I didn't see any status reports come in yesterday. Were any filed or served?

MR. GRUEN: Yes, your Honor.

ALJ ALLEN: Okay.

MR. GRUEN: Yes, your Honor. There was a status report from PG&E and Safety and Enforcement Division served at approximately 11:00 a.m. yesterday morning.

1 ALJ ALLEN: Okay. Do you have copies  
2 of that available that I could have? Because  
3 I did not seem to receive it for some reason.

4 (Ms. Lee handing copy to judge.)

5 ALJ ALLEN: Thank you. Thank you very  
6 much. I'll look and see why I didn't receive  
7 it, but thank you.

8 I'm curious, given that parties were  
9 directed on April 4th to try and meet to  
10 reach a stipulation and it's now May 29th,  
11 why the parties managed to only have one  
12 meeting?

13 Mr. Gruen.

14 MR. GRUEN: Your Honor, the parties met  
15 once on May 2nd as is indicated in the -- I  
16 know you haven't -- your Honor hasn't had an  
17 opportunity to see the status report.

18 ALJ ALLEN: I just read it.

19 MR. GRUEN: Oh, you did. Okay. So the  
20 May 2nd meeting was not intended to be an  
21 opportunity to do a set of stipulations, but  
22 more generally, it was a -- facilitating  
23 moving forward. And out of the May 2nd  
24 meeting, there was a plan for the June 10th  
25 meeting, as your Honor now knows, the second  
26 settlement conference.

27 So parties have -- as I understand,  
28 there has been some offline conversations in

1 preparation for the June 10th settlement  
2 conference. So there has been some  
3 discussion to that effect in preparation for  
4 June 10th, but that --

5 ALJ ALLEN: My question, Mr. Gruen, was  
6 why did the parties only manage to meet once  
7 between April 4th and May 29th?

8 MR. GRUEN: Yes, your Honor. In part,  
9 to accommodate certain scheduling needs of  
10 the parties. I don't have a better answer  
11 than that. I'm sorry, your Honor.

12 ALJ ALLEN: Mr. Pendleton.

13 MR. PENDLETON: Yes, your Honor. We  
14 met on May 2nd, and it was an all-party  
15 formally noticed settlement conference.  
16 Since that time, PG&E has reached out and has  
17 met with most of the parties who were willing  
18 to talk with us on a one-on-one basis to try  
19 to solicit feedback on the -- as a follow-up  
20 to the May 2nd discussions. We've been using  
21 this time between the May 2nd conference and  
22 the June 10th conference to incorporate some  
23 of the feedback that PG&E received at the May  
24 2nd conference plus the feedback we received  
25 from the individual meetings.

26 And what the parties have planned to  
27 do, your Honor, is on June 10th -- likely  
28 just a little bit prior to June 10th, PG&E

1 will be making a settlement proposal. PG&E  
2 is taking the pen, if you will, on a proposed  
3 settlement framework and the details of a  
4 proposed settlement.

5 So, really, what we've attempted to  
6 do was to lay out at the May 2nd conference a  
7 possible framework. We've been obtaining  
8 input from parties since that time to try to  
9 refine what our proposal would look like.  
10 We're currently in the process of getting our  
11 settlement authority, our leadership  
12 approvals. And we do plan to make a  
13 settlement proposal at the June 10th  
14 conference.

15 ALJ ALLEN: Thank you. That's helpful.  
16 Given the amount of time that's passed, what  
17 I'd like to do today is to set a schedule for  
18 hearings and going forward. So I have no  
19 problem with parties meeting on June 10th,  
20 and I have no problem with parties submitting  
21 a settlement or stipulation proposal via a  
22 motion following -- pursuant to the  
23 Commission's rules. But at this time, I want  
24 to make sure that if that doesn't happen or  
25 if there are obstacles or delays that we  
26 actually have an established litigation  
27 schedule.

28 So to that end, one of the concerns

1     that I had expressed and I think Commissioner  
2     Rechtschaffen had expressed at the April 4th  
3     prehearing conference was concern about the  
4     idea of how you would establish which  
5     inaccurate records were inadvertent and which  
6     may have been intentional, kind of a  
7     proportion of those.

8                 So what I'd like to do is, in  
9     setting a schedule, to instruct each party  
10    that wants to testify on that issue to  
11    essentially have a witness to calculate kind  
12    of the number or proportion of either  
13    erroneous tickets or number of violations. I  
14    know PG&E wanted to present testimony on the  
15    proportion of what was intentional versus  
16    inadvertent. I am interested in knowing  
17    management's knowledge and actions, but  
18    that's kind of a different issue.

19                So what each party should do is have  
20    a witness who can calculate or estimate the  
21    number of erroneous tickets or violations and  
22    describe the methodology by which they've  
23    used to come up with that number.

24                What I don't want is I don't want a  
25    parade of individual employees discussing  
26    individual tickets. I don't want just  
27    anecdotal stories of particular tickets but  
28    some sort of methodology for figuring out

1 essentially how many violations there are and  
2 how serious those violations are.

3 What I'm thinking also is that it  
4 seems to me that the testimony in hearings  
5 would most appropriately be focused on  
6 violations. Were there violations? How many  
7 violations were there? How serious were  
8 those violations? And I'm thinking that the  
9 question of remedies, of what to do about any  
10 such violations, would be more appropriately  
11 addressed via briefs rather than in  
12 testimony.

13 So I'd be happy to hear from the  
14 parties in terms of whether they agree,  
15 disagree or have questions relating to my  
16 thinking on how testimony and hearings and  
17 briefing would go.

18 Mr. Pendleton.

19 MR. PENDLETON: Thank you, your Honor.  
20 I think that what you're proposing makes  
21 sense in that, go through each of the  
22 tickets -- the hundreds of thousands of  
23 tickets would not be workable. One thought,  
24 which -- I understand that you want to set a  
25 schedule today. One thought would be to take  
26 this and come up with a proposed schedule --  
27 that parties could try to come up with a  
28 consensus schedule rather than trying to do



1     that more in the moment here with that  
2     feedback.

3             We could certainly go the route of  
4     trying to come up with some dates as well.  
5     But I'm reasonably confident that the  
6     parties -- we've been working well together.  
7     I think we could likely come up with a  
8     schedule with that in mind.

9             ALJ ALLEN: Yeah. I wasn't actually  
10    planning on issuing or developing a schedule  
11    here today. I do have the schedule proposals  
12    from SED and PG&E that were previously  
13    distributed. And so my plan was to work from  
14    those plus any conversations here today. And  
15    the assigned Commissioner and I would come up  
16    with a schedule based on these previously  
17    served -- this previously distributed  
18    document and any discussion we had today  
19    about the schedule.

20            Mr. Gruen.

21            MR. GRUEN: Thank you, your Honor.  
22    Your Honor, the idea of, if I'm summarizing  
23    accurately, having an aggregate and an  
24    explanation of the approach behind violations  
25    makes sense to Safety and Enforcement  
26    Division. And to the extent -- if we go that  
27    route, if there is not a settlement, of  
28    course, if briefs are necessary to establish

1 remedies, that would be tied to and fit based  
2 upon the violations. That, too, SED has no  
3 concern.

4 I think with regards to Mr.  
5 Pendleton's point about schedule, one option  
6 as well would be to -- if -- parties may have  
7 a better idea regarding the stipulations of  
8 fact on June 10th and may be able to further  
9 refine the schedules that both PG&E and  
10 Safety and Enforcement Division provide to  
11 your Honor and the Commissioner as well.  
12 That could be an option. And, of course, if  
13 your Honor wants to rule and provide a  
14 schedule as well, we would be open to that.

15 But we may be able to make headway  
16 and see if there can't be a more efficient  
17 schedule as a result of what happens on June  
18 10th depending on if there are enough  
19 stipulations of fact out of that meeting that  
20 could indeed hone the scope of the triable  
21 issues, if you will.

22 ALJ ALLEN: I would be willing to wait  
23 until after June 10th to establish a schedule  
24 so that I would take feedback from the  
25 parties.

26 So June 10th is a Monday, correct?

27 MR. GRUEN: Yes, your Honor.

28 ALJ ALLEN: If parties can get to me by

1 June 12th a proposed schedule. I understand  
2 if you're in the process of negotiating a  
3 settlement, the settlement or stipulation may  
4 take longer than that, but if you do come up  
5 with a proposed schedule, you can submit that  
6 to me on June 12th. The schedule will still  
7 be established by myself and assigned  
8 Commissioner, but I'm happy to take the  
9 recommendation to the parties as well.

10 MR. GRUEN: Understood, your Honor.

11 ALJ ALLEN: Do other parties wish to be  
12 heard on these questions regarding scope of  
13 testimony and schedule?

14 Ms. Koss.

15 MS. KOSS: Yes. Good morning. Rachel  
16 Koss on behalf of CUE.

17 I just wanted to clarify. You  
18 mentioned PG&E's interest in having testimony  
19 on intentional versus inadvertent, and I just  
20 wanted to clarify that is it okay to have  
21 testimony only on that topic without  
22 proposing a methodology for determining the  
23 number of violations/erroneous tickets.

24 ALJ ALLEN: So that would be CUE's  
25 testimony, not PG&E's testimony. Correct?

26 MS. KOSS: Correct. And I think it  
27 would just help with the penalty phase, the  
28 briefing.

1           ALJ ALLEN: I guess my only concern  
2           with that is I'm not going to preclude it.  
3           My only question is I'm not clear on how much  
4           value that's going to provide, but I would  
5           leave that to CUE. So I will determine the  
6           weight that such testimony would get. So I'm  
7           a little unclear on exactly what it would be,  
8           and I'm not asking you to preview it. But  
9           what I do want is I want to make sure that I  
10          have a good solid record for determining  
11          essentially a number of violations. And so I  
12          need to have some sort of a basis for that  
13          without having a parade of thousands of  
14          witnesses.

15          MS. KOSS: Understood. And I think --  
16          I'm not counting out that CUE will provide  
17          testimony on methodology. I'm sure every  
18          other party will, but I know that there's the  
19          likelihood that CUE would like to provide  
20          testimony on the intent.

21          ALJ ALLEN: Okay.

22          MS. KOSS: So I would appreciate that.

23          ALJ ALLEN: Thank you.

24          MS. KOSS: Thank you.

25          ALJ ALLEN: Other parties?

26          Mr. Hauck.

27          MR. HAUCK: Yes, your Honor. Brian  
28          Hauck for PG&E. One question of

1 clarification, and I understand the point  
2 that we can't have thousands of witnesses  
3 involved. Were you saying that each party  
4 could just have just one witness on all  
5 issues or there could be a small handful of  
6 witnesses, for example, on intentionality  
7 or -- then someone else on methodology and  
8 number of violations and issues.

9 ALJ ALLEN: Yes. You can have a small  
10 number, but I did want at least one.

11 MR. HAUCK: Thank you, your Honor.

12 ALJ ALLEN: And does any party believe  
13 that remedies need to be addressed in  
14 testimony, or is there a general concurrence  
15 that it would be most appropriate to look at  
16 remedies in briefing after testimony?

17 My thinking is the remedies would  
18 primarily be legal and policy questions  
19 rather than factual questions that would be  
20 appropriate for hearings.

21 Does anyone disagree with that?

22 (No response.)

23 ALJ ALLEN: I'm seeing thoughtful looks  
24 but no disagreement.

25 Commissioner Rechtschaffen, do you  
26 have anything you wish to add at this time?

27 COMMISSIONER RECHTSCHAFFEN: No, I  
28 would just obvious -- encourage you to -- in

1 meetings -- you attend and schedule meetings  
2 shortly thereafter if that's not conclusive.  
3 You could detect our desire to move forward  
4 quickly here and our hope that you can at  
5 least reach stipulations on key factual  
6 issues, if not resolve the case through  
7 settlement. So we just encourage you to keep  
8 working very hard and very quickly.

9 ALJ ALLEN: Thank you.

10 Off the record.

11 (Off the record.)

12 ALJ ALLEN: On the record.

13 My understanding is there is an open  
14 outstanding motion for party status from Mr.  
15 Sanders for City and County of San Francisco.  
16 I'm going to grant that motion for party  
17 status at this time.

18 (City & County of San Francisco was  
19 granted Party Status.)

20 MR. SANDERS: Thank you, your Honor.

21 ALJ ALLEN: Thank you.

22 Just to make sure that I'm clear, I  
23 wanted to make sure from PG&E's  
24 perspective -- I know there's a lot of new  
25 board members and new a CEO. Are they aware  
26 of this proceeding?

27 MR. PENDLETON: Yes, your Honor. They  
28 are.

1 ALJ ALLEN: Good. Thank you. Are  
2 there any other matters that we need to  
3 address today?

4 (No response.)

5 ALJ ALLEN: Commissioner.

6 COMMISSIONER RECHTSCHAFFEN: No.

7 ALJ ALLEN: Thank you very much. This  
8 prehearing conference is adjourned.

9 (Whereupon, at the hour of 1:49  
10 p.m., the Commission then adjourned.)

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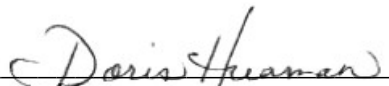
BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA

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