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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
(Filed November 19, 2015)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
JOINT RULING REVISING PRELIMINARY SCOPING MEMORANDUM**

Summary

This ruling revises the preliminary scoping memo, set forth in the Order Instituting this investigation, to incorporate various proposals resulting from a meet-and-confer process among the respondent Pacific Gas and Electric Company (PG&E) and intervenors.¹ The revisions (1) expand the number of communications to be included, beyond those specified in the preliminary scoping memo; (2) exclude two of the communications specified in the preliminary scoping memo; (3) require PG&E to conduct inquiry into 21 communications for potential *ex parte* violations at events to which the communications refer; (4) approve a protocol that PG&E will use in responding

¹ The five intervenors are the City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates, the California Public Utilities Commission's (Commission) Safety and Enforcement Division, and The Utility Reform Network.

to data requests; and (5) approve the schedule for the proceeding through September 2016.²

1. Background

This investigation concerns certain *ex parte* communications between PG&E and various decisionmakers at the Commission. These *ex parte* communications, which span several proceedings over several years, are either admitted by PG&E to have been improper or are alleged by the City of San Bruno to have been improper.³ Regarding the admittedly improper communications, the investigation will determine appropriate sanctions for PG&E's violation of statutes and Commission rules. Regarding the allegedly improper communications, the investigation will determine the validity of allegations and appropriate sanctions to the extent it finds the allegations to be valid.

Shortly after PG&E and intervenors submitted responses to the Order Instituting Investigation (OII), the assigned Commissioner and Administrative Law Judge (ALJ) directed the parties to meet and confer, with the following objectives:

² The OII authorizes the assigned Commissioner to revise the preliminary scoping memo and similarly authorizes the assigned Commissioner and ALJ to determine and modify the schedule, as may be required for efficient and fair resolution of the investigation. *See* OII at 6, 8.

³ The City of San Bruno originally made its allegations by motions that it filed in 2014 in another proceeding, where the motions are still pending. In light of the OII and today's ruling, the City of San Bruno should request, from the ALJ in that proceeding, permission to withdraw its motions.

- Where the factual evidentiary record is complete, the parties should articulate issues of policy or law that remain pending and create a proposed briefing schedule. Where additional factual evidence is needed in the record but the underlying facts are not disputed, the parties should consider a factual stipulation or other means to move undisputed factual information into the evidentiary record and propose a schedule for doing so.
- The parties should also identify and articulate any disputed issues of material fact on which evidentiary hearings are required. A schedule to address any such issues should also be proposed.⁴

Between January 25 and April 13, 2016, the parties met by telephone or in person eleven times. Their “Joint Meet-and-Confer Process Report,” dated April 18, 2016, (Joint Report), reflects near-unanimity among the parties in their recommendations for the further conduct of the proceeding. The sole disagreement concerns 21 additional communications for which the intervenors recommend that PG&E be required to conduct “due diligence.” PG&E objects that these communications do not themselves reveal *ex parte* violations but only refer to events at which intervenors suspect such violations may have occurred. PG&E recommends that the Commission decline to add the 21 communications to the investigation.

2. Discussion

The meet-and-confer process proved long but productive. The Joint Report responds fairly and comprehensively to the directions of the meet-and-confer ruling. Although the number of communications that the

⁴ Assigned Commissioner and Administrative Law Judge’s Ruling Directing Parties to Engage in Meet-and-Confer Process and Setting Prehearing Conference (filed January 8, 2016), at 2.

Commission will consider, pursuant to the Joint Report, is more than three times the number specified in the OII, the report's provisions relating to stipulations, data request protocol, and schedule should help the Commission to resolve this proceeding efficiently and close to the timeframe contemplated in the OII. We commend the participants for their efforts.

We find the Joint Report's unanimous recommendations are reasonable and do not require extensive analysis. We will comment, however, on the increase in the number of communications under consideration (an increase to which PG&E agrees) as well as on the additional "due diligence" to which PG&E objects.

2.1. Categories of *Ex parte* Communication

For purposes of formulating its recommendations, the Joint Report organizes the pertinent *ex parte* communications into three categories. There is no controversy regarding the first two categories.

Category 1 contains 135 communications. They are generally e-mails transmitting information from PG&E to the Commission. The first 36 communications are specified in the OII; the other 99 are communications whose addition to the investigation is proposed by one or more of the intervenors. The meet-and-confer participants have agreed that any factual or evidentiary issues regarding a Category 1 communication can be resolved by stipulation, and that any legal or policy issues can be resolved by the Commission without further discovery. The participants have also developed a format for the stipulations. (The Joint Report includes sample stipulations.) Finally, the participants propose to submit completed stipulations to the Commission by August 12, 2016.

We find all of the proposals regarding Category 1 communications are reasonable and approve them without modification.

Category 2 contains 24 communications. They are generally e-mails concerning PG&E activities, and they often describe oral communications. The first 10 communications are specified in the OII; the other 14 are communications whose addition to the investigation is proposed by one or more of the intervenors. For Category 2 communications, intervenors seek additional information in order to determine whether a given *ex parte* communication in this category is improper and (if there was an impropriety) what sanctions might be appropriate.

PG&E has agreed to provide additional information regarding Category 2 communications. Intervenors have already provided their data requests to PG&E, and the participants have agreed to a protocol that PG&E will apply to each communication in responding to the requests. Under the protocol, PG&E will:

- Review PG&E participants' e-mails, looking for e-mails that could be part of or concern the same chain for a period *starting three days before and ending three days after* the e-mail.
- Review PG&E participants' e-mails for e-mails that could relate to the future or past meeting or communication for a period starting *three days before and ending three days after* the future or past meeting or communication date identified in the email.
- Consider the feasibility of subjecting text messages to the same review as e-mails.

- If when applying the above protocol, additional communications with CPUC decisionmakers are identified concerning the same topic, apply the protocol to the dates and participants involved in the additional communications as well.
- Interview participants who are current employees and seek interviews from participants who are former employees to pose the questions set forth in the data requests.⁵

PG&E expects that it will need 4-6 months to answer the data requests under the above protocol. To resolve this investigation within the one-year time frame set in the OII, PG&E's answer will be needed within four months at the outside. We urge PG&E to devote the will and the resources to meet that deadline.

Finally, Category 3 contains 21 communications. These communications are not specified in the OII and do not, in themselves, appear to be *ex parte* violations. However, intervenors seek further information about these communications because they refer to meetings, meals, site visits, or other encounters between PG&E representatives and Commission decisionmakers. Such encounters, intervenors urge, may have been used for impermissible *ex parte* contacts. PG&E objects that these 21 communications differ from those in Category 1 or Category 2 in that none of the 21 communications is admitted or alleged to constitute an *ex parte* violation. Thus, PG&E argues, the Category 3

⁵ Joint Report at 6-7, (emphasis in original). Intervenors reserve the right to seek additional information; similarly, PG&E reserves the right to object to further information requests after it has responded to the current data requests. PG&E also notes that three of the Category 2 communications involve individuals who were not PG&E employees; PG&E commits to seeking relevant e-mails from these individuals and obtaining interviews with them to pose the questions in the data requests.

communications do not fall within the scope of the investigation, as set forth in the OII.⁶

Unlike Category 1 or Category 2, the e-mails in Category 3 are not *ex parte* communications, and no one alleges that these e-mails, in themselves, violate any provision of the Commission's *ex parte* rules. Normally, intervenors' suspicions about the events to which these e-mails refer would be insufficient to justify the exhaustive inquiry that intervenors seek. The inquiry may well turn up nothing, and even more disturbing, the time spent on Category 3 may divert the parties' effort away from the focus of the investigation, namely, the admitted or alleged *ex parte* violations in the communications in Categories 1 and 2.

Nevertheless, we acknowledge the extraordinary circumstances of this investigation, where PG&E's past conduct has aroused an unprecedented level of public concern. In these circumstances, we see benefit to ensuring that the various encounters referred to in the 21 e-mails in Category 3 served only their stated, proper purpose, and were not a cover for improper communication. We caution, however, that in their request, intervenors push the boundary of what is reasonable. We decline to require PG&E to devote hundreds of additional hours on no basis beyond vague suspicions.

In granting intervenors' request regarding Category 3, we do not change the focus of the investigation. That focus should remain on the 159 communications in Category 1 and 2.

⁶ The Joint Report provides for briefing of the debate on Category 3. Pursuant to the schedule in the report, parties filed concurrent opening briefs on May 20, 2016. PG&E filed a reply brief on June 10, 2016. No reply brief was filed on behalf of intervenors.

2.2. Schedule

The Joint Report proposes the following schedule for future activities in this proceeding, with additional events to be scheduled after PG&E responds as requested regarding the Category 2 and Category 3 communications:

Date	Activity
May 20, 2016	Deadline for Parties to file initial briefs regarding whether Category 3 communications should be included in this proceeding.
June 10, 2016	Deadline for Parties to file reply briefs regarding whether Category 3 communications should be included in this proceeding.
June 2016	Ruling regarding Joint-Meet-and-Confer proposal including whether additional communications in Categories 1 and 2 are to be included in the proceeding and whether Category 3 e-mails are to be included in this proceeding.
August 12, 2016	Parties provide proposed stipulations for Category 1 communications to the Commission.
August 12, 2016	If PG&E has not provided responses to the Data Requests for Category 2, and if applicable Category 3, PG&E will provide a status report proposing an expected date of completion.
September 2016	Further status conference to set schedule for remainder of proceeding. Parties to file Joint Status Report two days in advance of Conference.

The proposed schedule is reasonable, and we adopt it with one clarification regarding Category 3 e-mails. At this time, we only permit discovery. The results of that discovery will determine whether we consider including additional alleged *ex parte* violations within the scope of this proceeding. We expect that we will provide further directives in a ruling

following the August 12, 2016 status report. The ruling will also set the exact time and place for the September conference.

Therefore, **IT IS RULED** that the schedule set forth in Section 3.2 of the ruling is adopted and the preliminary scoping memo set forth in the Order Instituting Investigation is revised, consistent with the foregoing discussion.

Dated July 12, 2016, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
Assigned Commissioner

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey
Administrative Law Judge