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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 23, 2015)

**INITIAL COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY**

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Dated: December 3, 2015

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**INITIAL COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to Ordering Paragraph 2 of I.15-11-015, PG&E hereby files these initial comments to the Commission's 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 (the "Order").

**I. INTRODUCTION**

PG&E has identified and reported communications that may have violated the Commission's ex parte rules. PG&E reaffirms here that it makes no excuses.<sup>1</sup> PG&E accepts that there will be sanctions if the Commission determines that these communications violated its rules.

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<sup>1</sup>As the Commission recognized in its decision sanctioning PG&E for ex parte violations in its GT&S rate case, PG&E responded to the discovery of those communications in several important ways, including: (1) Three executives in PG&E's regulatory affairs group are no longer with the company; (2) PG&E created a new executive position in charge of regulatory compliance, reporting directly to the CEO; (3) PG&E appointed Ken Salazar, a former Secretary of the U.S. Department of the Interior, U.S. Senator from Colorado, Attorney General of Colorado, and Executive Director of the Colorado Department of Natural Resources, as special counsel on regulatory compliance matters, to assist in developing a best-in-class regulatory compliance model; and (4) PG&E overhauled its internal training protocols for employees who interact with the Commission. D.14-11-041, at pp. 10-11.

The Order indicates that this OII will determine whether specific PG&E communications violated the Commission's rules, and the appropriate sanctions. This is a targeted inquiry. Because PG&E does not intend to contest the facts about the communications referenced in the Order, the Commission only needs to decide: (1) Whether, as a legal matter, these uncontested facts give rise to violations of the Commission's rules; and (2) what sanctions should be imposed for any violations.

This is not the first time the Commission has decided these kinds of issues. When, as here, the facts are not contested, the Commission can and has done so without resorting to evidentiary hearings. Accordingly, PG&E respectfully submits that this matter can be conducted as an Order to Show Cause (OSC), and the questions raised in the Order can be addressed through briefing. PG&E recommends that opening briefs be submitted 30 days after the Prehearing Conference and reply briefs 20 days thereafter.

## **II. BACKGROUND**

### **A. Limited Factual Background**

In July 2014, the City of San Bruno filed a motion asking the Commission to order PG&E to show cause why it should not be sanctioned for 41 email communications with the Commission. The city contended that these emails reflected prohibited ex parte communications concerning the then-pending San Bruno OII proceedings (I.12-01-007, I.11-02-016, and I.11-11-009).<sup>2</sup> In August 2014, PG&E responded to the City's motion. PG&E expressed regret for the unprofessional tone of some of the communications, but explained that under the Commission's precedents, they did not violate the ex parte rules.<sup>3</sup> PG&E did not contest that the communications took place.<sup>4</sup>

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<sup>2</sup> *Motion of the City of San Bruno for an Order to Show Cause, Etc.*, filed on July 28, 2014 ("CSB Mot. for OSC"), at pp. 4-16.

<sup>3</sup> *Pacific Gas and Electric Company's Response to Motion of the City of San Bruno for an Order to Show Cause, Etc.*, at pp. 1-4.

<sup>4</sup> *Id.*

Although PG&E opposed the City's motion, it began its own voluntary review of email communications between PG&E and the Commission over a nearly five-year period beginning in 2010. In September 2014, PG&E disclosed that its review had revealed what it believed to be ex parte violations concerning the selection of the ALJ for PG&E's GT&S rate case.<sup>5</sup> As the Order recognizes, PG&E disclosed additional ex parte communications in other proceedings in the following months.<sup>6</sup> In January 2015, PG&E provided to the Commission approximately 65,000 email communications between the two, which the Commission subsequently made available to the public on its website.

## **B. Issues In the OII**

The Commission has identified the following as being at issue in this OII proceeding:

- PG&E's Oct. 6, 2014 Disclosure: PG&E's disclosure of a May 30, 2010 communication concerning A.09-12-020, A.09-09-021, A.09-12-002, and R.09-01-019.<sup>7</sup>
- PG&E's Dec. 22, 2014 Disclosure: PG&E's disclosure of September 20, 2011 communication concerning R.11-02-019, a March 3, 2012 communication concerning I.12-01-007, I.11-02-016, and I.11-11-009, and a December 31, 2012 communication concerning R.11-02-019, I.12-01-007, I.11-02-016, and I.11-11-009.<sup>8</sup>
- PG&E's May 21, 2015 Disclosure: PG&E's disclosure of a March 6, 2014 communication concerning A.14-02-028.<sup>9</sup>
- PG&E's June 11, 2015 Disclosure: PG&E's disclosure regarding a January 28, 2014 communication concerning 10-02-028.<sup>10</sup>

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<sup>5</sup> See generally D.14-11-041.

<sup>6</sup> Order, at pp. 6-7.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

- 41 Communications Identified by the City of San Bruno: In motions filed in July and November 2014, the City of San Bruno asked the Commission to order PG&E to show cause why it should not be sanctioned for 41 email communications with the Commission, which the City contended were prohibited ex parte communications concerning the San Bruno OIIs.<sup>11</sup>

With respect to these communications, the Order indicates the Commission will assess whether its rules were violated and, if so, what sanctions should be imposed.<sup>12</sup>

### III. DISCUSSION

#### A. The Issues Identified In the Order Can Be Decided Without Evidentiary Hearings

##### 1. The Commission Can Determine Violations and Penalties for PG&E's Prior Ex Parte Notices Without Evidentiary Hearings

The first two questions posed in the Preliminary Scoping Memo concern the rule violations and appropriate sanctions for the various notices filed by PG&E in October and December 2014, and May and June 2015.<sup>13</sup> The Commission can and has decided these questions without evidentiary hearings.

In November 2014, the Commission imposed sanctions and found a Rule 1.1 violation by PG&E for ex parte violations in its GT&S rate case.<sup>14</sup> The Commission considered the same rules and penalty factors at issue here.<sup>15</sup> In doing so, the Commission found evidentiary hearings unnecessary:

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<sup>10</sup> *Id.*

<sup>11</sup> CSB Mot. for OSC, at pp. 4-13; *Motion for Evidentiary Hearing on City of San Bruno's Motion for an Order to Show Cause, Etc.*, filed November 10, 2014 ("CSB Mot. for Evid. Hrg."), at pp. 1-5.

<sup>12</sup> Order, at pp. 6-7.

<sup>13</sup> Order, at pp. 6-7.

<sup>14</sup> D.14-11-041, at pp. 5-7, 20-25.

<sup>15</sup> *Compare id.*, at pp. 6-19 with Order, at p. 7.

[I]t is within our discretion to set the scope of a proceeding or inquiry, and then determine what issues and information may be material to render a determination. In this instance the OSC proscribed a very specific scope: assessing sanctions for the ex parte violations identified in PG&E's [Notice].

To render a determination for this narrow scope, the material issue was whether improper communications regarding judge assignment occurred. The answer to that was known and undisputed at the outset, and there was sufficient evidence from the outset to prove that the violations occurred and determine appropriate remedies and sanctions. We saw no added benefit or usefulness of the additional information desired by the Joint Parties.<sup>16</sup>

The same is true here. PG&E does not contest the facts in the disclosures. The Commission is therefore able to determine what violations occurred. And the positions of PG&E and any other parties concerning sanctions can be fully developed through briefing, as they were in the GT&S OSC.

**2. The Commission can decide the City of San Bruno's Motions Without Evidentiary Hearings**

The last two questions posed in the Preliminary Scoping Memo concern any rule violations and appropriate sanctions for the 41 email communications identified in the City of San Bruno's motions.<sup>17</sup> These questions likewise can be answered without evidentiary hearings.

The City of San Bruno's July 2014 motion asked the Commission to find that the 41 emails violated the ex parte rules, and to sanction PG&E for them.<sup>18</sup> At the time, the City recognized that the Commission could decide the motion without an evidentiary hearing.<sup>19</sup> The

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<sup>16</sup> D.15-06-035, at p. 9. In considering whether the record in the OSC supported a disallowance, the Commission noted that "in an adjudicatory and investigatory matter . . . [t]he Commission need only establish that a violation occurred." *Id.* at 12-13.

<sup>17</sup> Order, at pp. 6-7.

<sup>18</sup> CSB Mot. for OSC, at pp. 4-16.

<sup>19</sup> *Reply in Response to Pacific Gas and Electric Company's Opposition, Etc.* ("CSB Reply"), at p. 13 ("San Bruno has conclusively shown that this attitude has caused 41 violations of this Commission's ex parte rules.").

facts remain undisputed. Each of the 41 violations alleged by the City is reflected in the 41 emails identified by it.<sup>20</sup> And PG&E does not deny that it engaged in those communications. In responding to the City's motion in August 2014, PG&E only disagreed with the City of San Bruno's legal conclusion based on those undisputed facts.

The Order notes that in November 2014, the City of San Bruno subsequently filed a motion for an evidentiary hearing. But the City made clear that evidentiary hearings were not necessary to decide whether the 41 communications were violations.<sup>21</sup> Instead, the City sought to explore issues unrelated to this OII – issues since addressed by other means.

*First*, the City sought evidence concerning PG&E's interactions with the Commission more broadly with respect to the San Bruno OIIs.<sup>22</sup> That inquiry is beyond the scope of this OII. And the Commission concluded that the City of San Bruno's motions were not relevant to the final decisions in the San Bruno OIIs.<sup>23</sup> Moreover, the Commission and PG&E have already made public approximately 65,000 emails between them from 2010-2014.

*Second*, the City sought to offer expert testimony regarding ethics in the regulatory context.<sup>24</sup> But the Commission has since done substantial work on that issue through its own public hearings and expert analyses. There is no need to duplicate those efforts here. And once again, such testimony is beyond the scope of the OII.

The Commission has all the factual information necessary to decide whether the 41 email communications identified by the City of San Bruno violated the Commission's rules, and if so

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<sup>20</sup> CSB Mot. for OSC, at pp. 4-16.

<sup>21</sup> CSB Mot. for Evid. Hrg., at p.2 ("San Bruno's motion included supporting documentation of 41 improper communications among PG&E executives and President Peevey and his staff. The evidence demonstrates that PG&E actively participated in improper and systematic ex parte communications during the pendency of these proceedings.").

<sup>22</sup> *Id.*, at pp. 3-4.

<sup>23</sup> D. 15-04-024, at pp. 172-173.

<sup>24</sup> CSB Mot. for Evid. Hrg., at p. 4.

what sanctions are appropriate. The parties can therefore fully address these issues through briefing.

**B. Schedule**

If the issues in the preliminary scoping memo are adopted and the Commission determines that the OII can proceed as an OSC without hearings, PG&E proposes the following schedule:

- Prehearing conference: As determined by the Commission
- Opening briefs for all parties: 30 days after prehearing conference
- Reply briefs for all parties: 20 days after opening briefs

**IV. CONCLUSION**

For the foregoing reasons, PG&E respectfully submits that the issues in this OII can be decided by the Commission without evidentiary hearings, with a briefing schedule as set forth above.

Respectfully Submitted,

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