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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.

**I.18-12-007
(Issued December 14, 2018)**

**PACIFIC GAS AND ELECTRIC COMPANY'S
MOTION TO CLARIFY RULING ON
REDACTION OF INFORMATION IN SED REPORT**

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REDACTION OF INFORMATION IN SED REPORT**

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) submits this motion to clarify one aspect of the Administrative Law Judge's February 25, 2019 Ruling on Redaction of Information in the Investigative Report of the Commission's Safety and Enforcement Division (February 25 Ruling). That ruling ordered the Safety and Enforcement Division (SED) to file and serve an updated version of the SED Report and the accompanying 67 attachments that, in sum, would disclose the names of individuals with one of eleven specific titles.

PG&E accepts that ruling and has worked with SED in implementing the ruling. The February 25 Ruling will result in the release of the names of all individuals with the relevant titles whose names appear in the SED Report itself or in any of the Examinations Under Oath (EUOs) taken in this proceeding. PG&E makes this motion to clarify that the February 25 Ruling is intended to cause the disclosure of the identities of individuals with the relevant eleven titles only if those individuals had Locate & Mark (L&M) job responsibilities or their name appears in an attachment to the SED Report in the context of an L&M-related issue. The motion

would leave redacted the names of employees who are mentioned in an attachment, but only in a portion of the attachment that is unrelated to L&M-related issues.

I. Background

The SED Report released in connection with the Commission's Order Instituting Investigation and Order to Show Cause (OII) is 177 pages and includes 2,488 pages of attachments and transcripts that together mention the names of over 600 employees and, in some cases, contractors.¹ The OII ordered PG&E to propose redactions to portions of those materials that might merit confidential treatment, including the "names of witnesses and residence addresses."² PG&E proposed redactions on December 24, 2018. On December 31, 2018, SED requested that the names of PG&E employees with eleven particular titles be disclosed, along with names of witnesses who were subject to EUOs.³ SED's reasoning was based on the employees' involvement in the L&M issues at stake in this proceeding:

[I]t is in the public interest to disclose which levels of employees were aware of, participated in, or condoned, actions to mask PG&E's failure to timely and accurately inform construction personnel and private persons on the location of PG&E's underground pipes and other infrastructure in light of the impact of these actions on safety.⁴

¹ PG&E understands that the primary considerations regarding redactions relate only to the redaction of employees.

² OII at 16.

³ See 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 at 3 (Dec. 31, 2018) (SED Response).

⁴ SED Response at 2.

SED also sought to disclose the identities of certain individuals who “have first hand knowledge of the activities within the Locate and Mark Program.”⁵ SED did not identify any public interest in the identities of individuals who had no involvement in L&M issues.

The February 25 Ruling concluded that “[t]he appropriate scope of redaction is described in SED’s December 31, 2018 pleading.”⁶ The February 25 Ruling noted that “all of the PG&E employees named in the SED Report have safety responsibilities,”⁷ that the language in the OII “referring to redaction of witness names is not applicable to the PG&E employees identified in the SED Report,”⁸ that PG&E “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,”⁹ and that the OII did not require a Petition for Modification “to un-redact material in the SED Report.”¹⁰ The February 25 Ruling thus concludes that “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.”¹¹ Accordingly, “SED [wa]s directed to file and serve an updated public version of the SED Report.”¹²

SED, in turn, requested that PG&E provide SED with an updated public version of the SED Report, and its attachments, that conformed to the February 25 Ruling. PG&E has undertaken significant effort to redact SED’s Report and its attachments. In most cases,

⁵ SED Response at 3.

⁶ February 25 Ruling at 2.

⁷ February 25 Ruling at 5.

⁸ February 25 Ruling at 6.

⁹ February 25 Ruling at 6.

¹⁰ February 25 Ruling at 6.

¹¹ February 25 Ruling at 7.

¹² February 25 Ruling at 8.

implementing the February 25 Ruling has been straight-forward. Identities of individuals with one of the enumerated eleven titles and who are named in the SED Report and all but a handful of the SED Report's attachments will be disclosed. PG&E seeks clarification here only regarding the disclosure of individuals who do not appear anywhere in the SED Report itself and are not and were involved in L&M activities, but who have one of the eleven enumerated titles and appear in a document SED attached to its Report—albeit in a portion of the document that does not deal with L&M activities.

II. Argument

PG&E respectfully requests clarification that the February 25 Ruling was not intended to require disclosure of the identities of individuals who are neither mentioned in the SED Report, mentioned in EUOs, mentioned in portions of attachments to the SED Report that deal with L&M, nor involved in L&M activities. The primary effect of this clarification would be to protect the identities of over 500 PG&E employees whose names appear in one particular, voluminous document that SED attached to its Report. The document is Attachment 44, a 461-page monthly report that covers issues across PG&E's Gas Operations. The SED Report itself cites that document for one page.¹³ That page, and the few pages surrounding it, deal with L&M issues. The rest of that 461-page document deals with entirely unrelated, routine aspects of PG&E's gas business. If the February 25 Ruling requires the release of any PG&E employee whose name appears in an SED Report attachment with one of the titles in question, then the identities of hundreds of employees in those other sections would be disclosed. PG&E submits that such broad disclosure of PG&E employees engaged in other activities was not intended, for several reasons.

¹³ See SED Report at 74 n.191 (quoting Attachment 44 at page 109).

First, the express language of the February 25 Ruling does not appear to direct that SED release the identities of individuals who are not engaged in L&M activities or whose names do not appear in the context of L&M issues. All of the operative and reasoning language in the February 25 Ruling refers to individuals who are named in “the SED Report,” and makes no reference to individuals who are named only in attachments—let alone portions of attachments that are unrelated to L&M issues.¹⁴

Second, none of the reasoning in the February 25 Ruling suggests the disclosure of the identities of individuals who are not engaged in L&M activities. The February 25 Ruling expressly relies on the proposal made in SED’s December 31 pleading, which focuses on the public interest in the identity of “employees were aware of, participated in, or condoned, actions to mask PG&E’s failure to timely and accurately” locate and mark its facilities,¹⁵ and of employees who “have first hand knowledge of the activities within the Locate and Mark Program.”¹⁶

PG&E does not dispute that the disclosure of individuals whose names appear in Attachment 44 or similar documents in an L&M context (even if the individual does not have L&M job responsibilities) is in the public interest under the February 25 Ruling. But hundreds of employees are at risk of disclosure merely because a few relevant pages were included along with several hundred irrelevant pages in an SED Report attachment. SED’s decision to attach the full document, rather than an excerpt, does not make the identities of those employees in the public interest.

¹⁴ See February 25 Ruling at 2, 5-8.

¹⁵ SED Report at 2.

¹⁶ SED Response at 3.

To be clear, if PG&E's motion for clarification is granted, the identities of all individuals with the eleven specified titles whose names appear in the SED Report and its EUOs, regardless of context, will be disclosed. So will the identities of individuals with those titles whose names appear in attachments to the SED Report in any context relating to L&M. All that is at issue in this motion are the identities of individuals who are neither mentioned in the SED Report, mentioned in EUOs, mentioned in portions of attachments to the SED Report that deal with L&M, nor involved in L&M activities. Nothing in the February 25 Ruling nor the SED proposal that it adopted suggests there is a public interest in the identities of those individuals.

III. Conclusion

For the foregoing reasons, PG&E requests clarification that the February 25 Ruling does not require the disclosure of the identities of individuals who are neither mentioned in the SED Report, mentioned in EUOs, mentioned in portions of attachments to the SED Report that deal with L&M, nor involved in L&M activities.

Respectfully submitted,

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