

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

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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

**JOINT RESPONSE OF THE SAFETY AND ENFORCEMENT DIVISION,  
THE OFFICE OF RATEPAYER ADVOCATES,  
THE UTILITY REFORM NETWORK, THE CITY OF SAN BRUNO,  
AND THE CITY OF SAN CARLOS TO PACIFIC GAS & ELECTRIC'S  
SEPTEMBER 21, 2017 MOTION ACCEPTING THE PROPOSED DECISION'S  
MODIFICATION OF THE SETTLEMENT AGREEMENT**

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November 1, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Order Instituting Investigation and Ordering  
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**I. INTRODUCTION**

On September 1, 2017, the Commission issued the Proposed Decision of Administrative Law Judge Mason (PD) addressing the Settlement Agreement proposed by the City of San Bruno (San Bruno), the City of San Carlos (San Carlos), the Office of Ratepayer Advocates (ORA), the Safety and Enforcement Division (SED), The Utility Reform Network (TURN), and Pacific Gas and Electric Company (PG&E). The PD found that the proposed Settlement Agreement would be in the public interest if the fine to be paid by PG&E to the State General Fund were increased from \$1 million to \$12 million.<sup>1</sup> The PD instructed PG&E to file a motion within 20 days after service of the PD accepting this increase in the fine or else prepare to litigate the underlying issues

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<sup>1</sup> PD, pp. 41-42.

in this proceeding.<sup>2</sup> The PD provided other parties with 10 days from the date of PG&E's motion to file a response.<sup>3</sup>

As directed by the PD, PG&E filed a motion on September 21, 2017. PG&E's Motion states, "it is willing to accept the Proposed Decision's modification of Section 2.2A of the Settlement Agreement to increase PG&E's payment to the State of California General Fund from \$1 million to \$12 million."<sup>4</sup> Unfortunately, that is not all that PG&E communicated in its motion. PG&E also identified additional email communications that were not included in the record of this Order Instituting Investigation (OII) and were unknown to the parties to the Settlement Agreement.<sup>5</sup> The emails indicate that there were additional unlawful ex parte communications between PG&E and California Public Utilities Commission (CPUC) Decisionmakers involving the San Bruno OIIs.

Pursuant to the PD and subsequent rulings of Administrative Law Judge (ALJ) Mason extending the deadline for responses to PG&E's motion, SED, ORA, TURN, San Bruno, and San Carlos, hereby file this Response to PG&E's September 21, 2017 Motion.<sup>6</sup> As explained below, SED, ORA, TURN, San Bruno, and San Carlos accept the PD's modification to the Settlement Agreement and continue to advocate for its adoption by the Commission. We also urge the Commission to open a second phase of this OII to investigate and consider appropriate sanctions for the new communications disclosed by PG&E on September 21, and others that may be discovered.

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<sup>2</sup> PD, pp. 43-44.

<sup>3</sup> PD, p. 43.

<sup>4</sup> PG&E Motion, p. 2.

<sup>5</sup> PG&E Motion, p. 2. As PG&E explains, PG&E alerted the parties to the Settlement Agreement of the existence of these new communications on September 20, 2017, the day before filing its motion, but did not disclose the communications themselves.

<sup>6</sup> On October 3, 2017, ALJ Mason issued an e-mail ruling extending the due date for responses from October 2 until October 18, 2017, to provide counsel for the City of San Bruno and City of San Carlos additional time to confer with their respective City Councils to receive direction on how to respond to PG&E's disclosure of new email communications in its motion. ALJ Mason extended this deadline an additional two weeks, to November 1, in his October 17, 2017 email ruling, at the request of the City of San Bruno.

## II. RESPONSE TO PG&E'S MOTION

### A. The Commission Should Adopt the Settlement Agreement, as Modified by the PD, to Resolve the Issues Arising from the Communications Identified in the Settlement Agreement.

Section 2.2.A of the Settlement Agreement obligates PG&E to pay \$1 million to the State of California General Fund. The PD concluded that this amount should be increased to \$12 million to better account for the harm to the Commission and to the public from PG&E's conduct.<sup>7</sup> As indicated above, PG&E has accepted this modification to the Settlement Agreement by its motion. SED, ORA, TURN, San Bruno, and San Carlos similarly accept the PD's modification.

The Settlement Agreement, with the modification indicated in the PD, offers a comprehensive resolution of the legal and policy issues in this proceeding, *as they pertain to the communications known to the non-PG&E parties – SED, ORA, TURN, and the Cities of San Bruno and San Carlos -- at the time they negotiated the Settlement Agreement*. As Section 3.5 of the Settlement Agreement explains, parties intended to resolve all claims arising from the communications included in the following sources: (a) the City of San Bruno's Public Records Act requests to the Commission, as described in San Bruno's July 2014 Motion; (b) documents PG&E produced to the Commission in January 2015, pursuant to a January 13, 2015 Administrative Law Judge ruling in Application (A.) 13-12-012, which documents were subsequently posted on the Commission's website; (c) documents PG&E produced in discovery in A.13-12-012; and (d) communications reported to the Commission by PG&E in late filed notices of ex parte communications and notices of improper communications, filed in September, October and December 2014, and May and June 2015.<sup>8</sup> The PD recognizes that the non-PG&E Parties worked diligently to review this large volume of communications and determine which ones were appropriate for including in the scope of this proceeding and reflecting

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<sup>7</sup> PD, pp. 39-41.

<sup>8</sup> On September 1, 2016, parties filed factual stipulations regarding the "Category 1" Communications.

in the Settlement Agreement.<sup>2</sup> These efforts yielded a much smaller universe of communications, referred to by the settling parties as the Category 1, 2, and 3 Communications, that are the subject of the factual stipulations filed by all parties on September 1, 2016, as well additional factual stipulations, data request responses, and related documents included in Exhibits 1, 2, and 3 to the Settlement Agreement.<sup>10</sup>

PG&E's recently-disclosed discovery of additional communications that occurred in the time period at issue in this proceeding does not change the position of SED, ORA, TURN, San Bruno, and San Carlos, that the Settlement Agreement reflects a reasonable resolution of ex parte violations encompassed by the Category 1, 2, and 3 Communications. Parties have expended significant resources on resolving what we thought to be the issues in this OII, and SED, ORA, TURN, San Bruno, and San Carlos do not want to further delay ratepayer relief and payment to the Cities who have actively participated in the proceeding. We urge the Commission to expeditiously adopt the Settlement Agreement, as modified by the PD, for all of the reasons presented in the Joint Motion for Adoption of the Settlement Agreement.

**B. The Commission Should Open a Second Phase of this OII to Consider the Additional Ex Parte Violations Suggested by the Newly Disclosed Emails.**

SED, ORA, TURN, San Bruno, and San Carlos, are very concerned about the additional emails disclosed by PG&E for the first time on September 21, 2017. These emails raise very serious new issues about PG&E's dealings with the Commission in 2013 and 2014, beyond the specific allegations of unlawful conduct that are resolved by the Settlement Agreement.

Moreover, we do not know the extent of additional unreported ex parte communications but have reason to be concerned that there are more. Our concern arises from the fact that PG&E did not produce these emails during the discovery process in this

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<sup>2</sup> PD, p. 32.

<sup>10</sup> See Joint Motion for Adoption of Settlement Agreement, pp. 7-9.

proceeding, despite that they occurred during the same time period and involved some of the same people as other emails resolved by the Settlement Agreement. This is because discovery was conducted according to a series of protocols proposed by PG&E and agreed to by the non-PG&E parties “to ensure that discovery was conducted efficiently and without dispute.”<sup>11</sup> Rather than simply wonder how many other emails indicating ex parte violations may have slipped through the filters sanctioned by the discovery protocols, we believe that further discovery related to the new emails is necessary. Once we have more information, we can present the Commission with recommendations regarding remedies for PG&E’s conduct at issue in the additional emails.

Accordingly, SED, ORA, TURN, San Bruno, and San Carlos urge the Commission to provide a forum for investigating additional ex parte violations, including those disclosed by PG&E on September 21 and others that may be revealed through discovery. Specifically, we recommend that the Commission indicate in its decision adopting the Settlement Agreement that it will open a second phase of this OII for this purpose. That phase should be scoped so as to permit the Commission and parties to consider a range of sanctions for PG&E and its agents for violating the ex parte rules and Rule 1.1 of the Commission’s Rules of Practice and Procedure, beyond the violations specifically resolved by the Settlement Agreement. We believe this approach is the most efficient way of resolving the long-pending issues resolved by the Settlement Agreement and disputes concerning the additional communications.

### **III. CONCLUSION**

For the foregoing reasons, SED, ORA, TURN, San Bruno, and San Carlos recommend that the Commission adopt the Settlement Agreement, as modified by the PD with PG&E’s acceptance, and open a second phase of this proceeding to investigate the new communications disclosed in PG&E’s motion.

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<sup>11</sup> See Joint Motion for Adoption of Settlement Agreement, pp. 8-9 (referencing the Category 2 Protocol and Category 3 Protocol included in Settlement Agreement, Exhibits 2 and 3).

Respectfully submitted,

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November 1, 2017