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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)

PACIFIC GAS AND ELECTRIC COMPANY'S REPLY TO THE 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 PG&E'S SEPTEMBER 21, 2017 MOTION ACCEPTING THE PROPOSED DECISION'S MODIFICATION OF THE SETTLEMENT AGREEMENT

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Dated: November 8, 2017

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OF THE STATE OF CALIFORNIA

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On November 2, 2017, Assigned Administrative Law Judge ("ALJ") Mason granted PG&E's request to file this Reply to the 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 (collectively, the "Non-PG&E Parties") to Pacific Gas and Electric Company's ("PG&E's") September 21, 2017 Motion Accepting the Proposed Decision's Modification of the Settlement Agreement.

I. BACKGROUND

On March 28, 2017, the Non-PG&E Parties and PG&E (collectively, the "Parties") filed their Joint Motion for Adoption of the Settlement Agreement. On September 1, 2017, the Assigned ALJ issued a Proposed Decision approving the Settlement Agreement with a modification increasing the General Fund penalty for PG&E and allowing PG&E twenty days to accept that modification. On September 21, 2017, PG&E filed a Motion confirming that PG&E accepted the increased penalty. At the same time, PG&E disclosed certain additional emails from 2013 and 2014 that it identified in the course of responding to a recent unrelated government inquiry. The additional emails were similar in nature to the communications

previously included in this proceeding. On November 1, the Non-PG&E Parties filed their Joint Response To PG&E's September 21, 2017 Motion Accepting The Proposed Decision's Modification of the Settlement Agreement (the "Joint Response"), asking that the Commission open a second phase of this OII. This Reply opposes the recommendation to open a second phase.

II. DISCUSSION

PG&E deeply regrets the improper communications during 2010 through 2014 that led to this proceeding and are the basis of the Settlement Agreement. PG&E disclosed additional communications on September 21 that similarly reflect PG&E's failure to properly interact with the Commission during that time period. PG&E is committed to doing business in a way that will restore integrity to its regulatory process.

This OII was initiated to investigate 48 specific communications, and expanded to ultimately address 164 communications, including more than 100 communications that the Non-PG&E Parties requested be included from various disclosures and productions made by PG&E.[1/] Although the Parties disagreed concerning whether each of these communications was a violation, they agreed to add them to the record in the proceeding. This was done in the interest of resolving the issues related to PG&E's alleged ex parte violations efficiently, in a single, comprehensive proceeding.[2/]

PG&E would like to respond to the Non-PG&E Parties' concern that "PG&E did not produce these emails during the discovery process in this 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."[3/] The discovery protocols employed in this proceeding were approved in the revised scoping memorandum, and followed by PG&E in responding to data

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1/ April 18, 2016 Joint Meet and Confer Process Report, at p. 3.

2/ Settlement Agreement, at p. 2.

3/ Joint Response, at pp. 4-5.

requests served by the Non-PG&E Parties. The protocols included conducting interviews and a review of emails by certain individuals involved for a specified period of time before and after the communication at issue.[4/] They were not designed to search for all communications that may allegedly have been improper.[5/] It is thus not whether the protocols failed to find other communications, but rather whether they succeeded in developing an evidentiary record sufficient to examine PG&E's conduct with respect to these communications.

PG&E respectfully submits that a second phase would not accomplish the objectives of this proceeding better than the penalty, deterrence and remedial actions already provided in the Settlement Agreement, and that it is therefore unnecessary. The Settlement Agreement and the Proposed Decision provide a comprehensive and forceful statement that PG&E's conduct was unacceptable and cannot occur again. PG&E admitted that its "employees and agents engaged in communications with decisionmakers at the Commission, as well as related conduct that was harmful to the regulatory process."[6/] The additional communications disclosed on September 21 are consistent with PG&E's admission and the substantial monetary and non-monetary remedies imposed. The Proposed Decision found that the sanction, as amended to increase the payment to the General Fund, was the highest settlement reached in this type of case.[7/] With the modified sanction, the Proposed Decision approved the settlement terms, indicating that they are a

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4/ July 12, 2016 Ruling Revising Preliminary Scoping Memo, at p. 5 (describing the protocol and noting that the "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.").

5/ See Proposed Decision, at pp. 20 and 36 (describing Stipulations, Data Requests and Protocols). The Meet and Confer Process covered Data requests "regarding specific communications between PG&E and the CPUC" and "Protocols for PG&E to follow to respond to the Data Requests." *Id.,* at p. 20

6/ Settlement Agreement, at p. 4.

7/ Proposed Decision, at pp. 20, 36.

sufficient penalty and a deterrent against future conduct.[8/] Extending this proceeding to include, or search for, additional communications from the 2010 to 2014 time period is not necessary to effectuate the penalty and deterrence objectives of this OII and will not aid in restoring the integrity of PG&E's regulatory process.

The Settlement Agreement, as modified by the Proposed Decision, serves the goals of the proceeding. Without resolving whether each individual communication at issue constituted a violation,[9/] the Settlement Agreement, as modified by the Proposed Decision, imposes substantial penalties upon PG&E and sends a message that these types of violations will not be tolerated. The nearly $100 million in financial remedies is substantially greater than any sanction the Commission has ever imposed for violations of its ex parte rules. These remedies also serve as a significant deterrent against future violations by PG&E and others practicing before the Commission, and impose a punishment and restrictions commensurate with PG&E's compliance failures from 2010-2014.[10/] Moreover, these remedies are in addition to the significant voluntary remedial efforts implemented by PG&E in recognition of its ex parte compliance shortcomings.[11/] In short, PG&E has been held accountable for its conduct during this time period.

PG&E respectfully submits that the Commission should approve the Settlement Agreement, as modified by the Proposed Decision, or further modify the General Fund penalty to

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8/ See *Id.,* at pp. 14-15 and 32-36 (finding the Settlement Agreement reasonable as it addresses PG&E's wrongful conduct, PG&E's financial payments, and PG&E's changes to dealing with decisionmakers to make sure similar wrongful conduct does not occur in the future).

9/ In their *Joint Motion for Adoption of the Settlement Agreement,* at p. 21, the Parties noted that new legislation, new Commission rules, and PG&E's agreement to certain reporting obligations beyond those required by the Commission's rules, reduced the usefulness of communication-by- communication dispositions in this proceeding.

10/ *Joint Motion for Adoption of the Settlement Agreement,* at pp. 19-21.

11/ *Id.,* at pp. 4-5; see Proposed Decision, at p. 41, recognizing that PG&E reported violations and implemented other measures to prevent violations in the future; see Proposed Decision, at p. 39, recognizing that certain PG&E and Commission personnel have resigned.

reasonably account for the additional communications disclosed on September 21, as a comprehensive resolution of this proceeding.[12/]

III. CONCLUSION

For the above reasons, PG&E requests that the Commission not open a second phase of this proceeding to include additional communications from the 2010 to 2014 time period. The additional communications are similar in nature to those previously addressed in this proceeding. Through the Settlement Agreement now before the Commission, PG&E has admitted wrongdoing and agreed to pay an unprecedented penalty. PG&E has also taken actions to ensure that these types of communications will not occur again. Through the modified Settlement Agreement, PG&E is being meaningfully punished for its misconduct. A second phase is not necessary to effectuate the objectives of this OII.

Respectfully Submitted,

By: */s/ Kirk A. Wilkinson*
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12/ If the Commission determines that additional discovery is necessary, it should be conducted expeditiously in this proceeding, not in another phase or another proceeding. After any discovery the Parties can then determine how the Settlement Agreement should be modified, if at all, so that these issues can be resolved in a single proceeding as contemplated by the Order instituting this OII.