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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 BRIEF REGARDING  
WHETHER 21 ADDITIONAL COMMUNICATIONS SHOULD BE INCLUDED IN  
PROCEEDING I.15-11-015**

KIRK A. WILKINSON  
SEAN P.J. COYLE  
LATHAM & WATKINS LLP  
355 South Grand Avenue  
Los Angeles, CA 90071-1560  
Telephone: (213) 485-1234  
Facsimile: (213) 891-8763  
Email: [Kirk.Wilkinson@lw.com](mailto:Kirk.Wilkinson@lw.com)

Dated: June 10, 2016

Attorneys for  
PACIFIC GAS AND ELECTRIC COMPANY

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Pacific Gas and Electric Company (“PG&E”) hereby files this Reply Brief in support of its Opening Brief<sup>1/</sup> regarding whether 21 additional communications (the “21 Additional Communications” or the “21”) should be included in this proceeding.

**I. INTRODUCTION**

This proceeding already has expanded in scope to include 159 communications, and it likely will continue through the end of 2016, absent a settlement.<sup>2/</sup> The Parties<sup>3/</sup> agree that the 21 Additional Communications at issue here do not on their face reflect ex parte violations, and generally do not provide much detail regarding the potential meetings, site visits, facility tours, or communications. Absent an indication that an ex parte violation occurred, the Commission should not include the 21 Additional Communications in this proceeding. Doing so will

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1/ Pacific Gas And Electric Company’s Opening Brief Regarding Whether 21 Additional Communications Should Be Included In Proceeding I.15-11-015 (“PG&E’s Opening Brief”), filed May 20, 2016.

2/ PG&E indicated during the meet and confer process, and still maintains, a willingness to consider all communications, including the 21 Additional Communications, as part of settlement discussions.

3/ The City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates (“ORA”), the Safety and Enforcement Division (“SED”), The Utility Reform Network (“TURN”) collectively are referred to as the “Non-PG&E Parties.” Together with PG&E, they are referred to as the “Parties.”

unnecessarily delay this proceeding and will hinder the Commission's and Parties' ability to efficiently resolve this matter.

## II. DISCUSSION

The Non-PG&E Parties acknowledge that the 21 Additional Communications are different than the Category 2 emails – which they contend *do* reflect violations. The Non-PG&E Parties nevertheless seek to treat them the same by including them in the case and subjecting them to the same discovery. PG&E submits that this dividing line – recognized by all Parties based upon the qualitative differences between Category 2 and the 21 Additional Communications – should determine what is in and out of this proceeding.

The Parties also agree that there is a lack of detail regarding the 21 Additional Communications; this will complicate the process of subjecting them to diligence. Indeed, several are so lacking in detail that including them here would be tantamount to ruling that all encounters between a utility and the Commission warrant investigation. *See e.g.* 3-2, 3-6, 3-9, 3-10, 3-11, 3-20. For example, in communication 3-9, a former PG&E employee states to a Commissioner: “Good to see you today. It was a surprise but welcome.”<sup>4/</sup> A determination that a communication like this warrants inquiry would do nothing to advance the goals of this case or the Commission's *ex parte* rules in general.

In other communications, the available information refers to what appear to be routine, permissible interactions such as site visits, facility tours, and ride alongs. *See e.g.* 3-7, 3-8, 3-13, 3-14, 3-15, 3-17, 3-18, 3-19, 3-21. Again, the Commission should not order inquiry and discovery into such contacts on the basis of speculation that some unidentified improper interaction also may have taken place.

Several of the 21 Additional Communications indicate that an *ex parte* communication *did not occur*. As discussed in PG&E's Opening Brief, in communication 3-18, Commissioner Florio specifically noted that his tour of PG&E's Gas Transmission and Distribution Operations

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4/ Of note, most of the 21 Additional Communications concern individuals who are no longer employed at PG&E.

Center was not a lobbying tour.<sup>5/</sup> As highlighted in both PG&E's Opening Brief and the Non-PG&E Parties' Opening Brief,<sup>6/</sup> in communication 3-3, a PG&E employee specifically notes that certain topics must be avoided at an upcoming meeting or PG&E would risk needing to file an ex parte notice.<sup>7/</sup> These provide no justification for inclusion in a case about potential ex parte communications.

The Non-PG&E Parties acknowledge that "it is not clear from the [21 Additional Communications] that an improper ex parte communication took place," but argue that "it would be unreasonable to assume that no improper communications occurred without conducting additional follow up."<sup>8/</sup> This approach is backwards. Under this view, "bread and butter" interactions between regulated entities and the Commission would be assumed improper before proven otherwise. *See* D.07-07-020 at 23 ("[A]gency officials may meet with members of the industry both to facilitate settlement and to maintain the agency's knowledge of the industry it regulates," and such informal contacts are the "bread and butter" of the administrative process.). PG&E does not share the Non-PG&E Parties' view that all 159 of the Category 1 and 2 communications already in the case are violations. In the spirit of compromise, however, PG&E supported bringing them in to the case because the Non-PG&E Parties specifically alleged that they are violations. But, the line should be drawn at keeping out these 21 Additional Communications that all Parties agree are not on their face apparent violations.

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5/ PG&E's Opening Brief, p. 4.

6/ Joint Opening Brief of the Safety and Enforcement Division, the Office of Ratepayer Advocates, The Utility Reform Network, the City of San Carlos, and the City of San Bruno on Whether "Category 3" Communications Should be Included in this Proceeding ("Non-PG&E Parties' Opening Brief"), filed May 20, 2016.

7/ PG&E's Opening Brief, p. 4; Non-PG&E Parties' Opening Brief, p. 3-4.

8/ Non-PG&E Parties' Opening Brief, p. 3.

### III. CONCLUSION

PG&E respectfully requests the Commission not add the 21 Additional Communications to this proceeding.

Respectfully Submitted,

By: /s/ Kirk A. Wilkinson  
KIRK A. WILKINSON

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SEAN P.J. COYLE  
LATHAM & WATKINS LLP  
355 South Grand Avenue  
Los Angeles, CA 90071 1560  
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Facsimile: (213) 891-8763  
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