

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA



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In Attendance: COMMISSIONER CLIFFORD RECHTSCHAFFEN
ADMINISTRATIVE LAW JUDGE PETER V. ALLEN, presiding

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| |) | PREHEARING |
| |) | CONFERENCE |
| |) | |
| Order Instituting Investigation and |) | |
| Order to Show Cause on the |) | |
| Commission's Own Motion into the |) | Investigation |
| Operations and Practices of Pacific |) | 18-12-007 |
| Gas and Electric Company with |) | |
| Respect to Locate and Mark Practices |) | |
| and Related Matters. |) | |

REPORTER'S TRANSCRIPT
San Francisco, California
April 4, 2019
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Reported by: Ana M. Gonzalez, CSR No. 11320
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I N D E X

PARTY STATUS GRANTED

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1 SAN FRANCISCO, CALIFORNIA

2 APRIL 4, 2019 - 1:30 p.m.

3 * * * * *

4 ADMINISTRATIVE LAW JUDGE ALLEN: On the
5 record.

6 Good afternoon. This is the time
7 and place for the prehearing conference in
8 Investigation 18-12-007, Order Instituting
9 Investigation and Order to Show Cause on the
10 Commission's Own Motion into the Operations
11 and Practices of Pacific Gas and Electric
12 Company with Respect to Locate and Mark
13 Practices and Related Matters.

14 I'm Administrative Law Judge Peter
15 Allen. With me here today is Commissioner
16 Rechtschaffen.

17 Do you have any opening statements?

18 COMMISSIONER RECHTSCHAFFEN: I do not.
19 Thank you, Judge.

20 ALJ ALLEN: Okay. What I'd like to do
21 is in order is start with any party
22 appearances. As of right now the only
23 parties to this case are SED and PG&E. So
24 anyone else who wishes to be a party, this
25 would be your opportunity.

26 After that we'll go to SED's motion
27 regarding the scope, PG&E's motion for
28 clarification regarding redactions. Then

1 we'll go to scheduling, need for hearings,
2 and any other matters.

3 So with that I have two appearance
4 forms. I have Rashid Rashid for Office of
5 the Safety Advocates.

6 And Ms. O'Hara, you're appearing
7 today for Mr. Rashid?

8 MS. O'HARA: Correct.

9 ALJ ALLEN: Okay. Office of Safety
10 Advocates, Mr. Rashid, is granted party
11 status.

12 (Office of Safety Advocates was
13 granted Party Status.)

14 ALJ ALLEN: The other one I have is
15 William Sanders from City and County of San
16 Francisco. Mr. Sanders, are you here?

17 MR. SANDERS: Yes, I am.

18 ALJ ALLEN: And Mr. Sanders, what do
19 you anticipate to be your participation in
20 this proceeding?

21 MR. SANDERS: Unclear at this time,
22 Judge, but we -- we've had issues with
23 marking and locating with PG&E in the past,
24 and we also are a utility in San Francisco.
25 So we have an interest in this proceeding.

26 ALJ ALLEN: Cool. What I'm going to do
27 for right now is I will put you on the
28 service list as information only. If you

1 wish to become a party, if you wish to file
2 something, just send an email to me copying
3 the service list requesting that, and you
4 will become a party and can participate
5 fully. But in the meantime you'll be on
6 information only, and then I can convert that
7 to party status if you decide to participate
8 more actively.

9 MR. SANDERS: Thank you, your Honor.

10 ALJ ALLEN: Thank you.

11 Anyone else? Ms. Lee.

12 MS. LEE: Your Honor, the Public
13 Advocates Office renews its December 21st
14 motion for party status. We expect to be
15 mainly involved in the remedy stage of this
16 proceeding, but we do expect to participate
17 and expect that we will be adding to the
18 record.

19 ALJ ALLEN: Thank you. Your motion for
20 party status is granted.

21 (Public Advocates Office was granted
22 Party Status.)

23 ALJ ALLEN: Mr. Long.

24 MR. LONG: Yes. TURN likewise renews
25 its motion for party status filed January
26 14th. We are here as a representative of
27 residential customers and holding PG&E
28 accountable for providing safe service for

1 the money that ratepayers pay for that
2 service. We intend to pursue factual and
3 legal issues related to the number of
4 violations, responsibility of upper
5 management, and to the fines and remedies
6 issue including possibly ratemaking-related
7 remedies.

8 ALJ ALLEN: Thank you, Mr. Long. And
9 TURN's request to be a party is granted.

10 (The Utility Reform Network was
11 granted Party Status.)

12 ALJ ALLEN: Anyone else? Ma'am.

13 MS. KOSS: Good afternoon. Rachael
14 Koss on behalf of Coalition of California
15 Utility Employees. We also renew our pending
16 motion for party status which was filed on
17 January 15th. We represent workers in PG&E
18 including those in the locate and mark
19 division, some of which are named in SED's
20 report.

21 ALJ ALLEN: Thank you. CCUE's motion
22 for party status is also granted.

23 (Coalition of California Utility
24 Employees was granted Party Status.)

25 ALJ ALLEN: Is there anyone else here
26 today seeking party status?

27 Okay. Seeing none, let's turn to
28 SED's motion to include electric distribution

1 in the scope of the proceeding. For those of
2 you who were at the locate -- or the law and
3 motion hearing earlier, I had raised the
4 issue of whether this included electric
5 distribution since it was, the locate and
6 mark services were performed by the same
7 group. I have received PG&E's response. So
8 I am inclined to grant SED's motion to
9 include electric distribution.

10 I know the Office of Safety
11 Advocates attempted to file a supporting
12 response, but you were not a party. So that
13 was not accepted yet. But we will note that
14 OSA supports SED's motion.

15 I just have a question. In the PG&E
16 response there were two things I have
17 questions on. One of them is the electric-
18 only distribution facilities. So are the
19 locate and mark services provided by this
20 same group, or is it electric operations
21 group that does it?

22 MR. PENDLETON: Your Honor, in those
23 electric-only areas previously in the time
24 period of the OII those facilities were
25 located and marked by electric operations
26 personnel. Currently gas operations handles
27 the locating and marking even in those
28 electric-only areas. So there was a change

1 in approach during the time period of the
2 OII. So --

3 COMMISSIONER RECHTSCHAFFEN: Can you
4 speak into the mic.

5 MR. PENDLETON: Sure. Can you hear me
6 better? How about that?

7 COMMISSIONER RECHTSCHAFFEN: Can you
8 guys hear in the back?

9 ALJ ALLEN: Just speak into it and see.

10 MR. PENDLETON: Hello.

11 ALJ ALLEN: Yeah.

12 MR. PENDLETON: Okay. There we go. So
13 maybe just summarize in case they couldn't
14 hear. The time period of the OII, 2012 to
15 2017, there are portions of PG&E's service
16 territory where we do not have gas
17 facilities. And in the earlier portion of
18 the OII time period in those electric-only
19 areas electric operations personnel located
20 and marked electric distribution facilities.
21 That work was transitioned over to the
22 current approach during the time period of
23 the OII to now where gas operations is
24 responsible for that locating and marking
25 even in the electric-only areas.

26 ALJ ALLEN: And was there a specific
27 date, or was that over a period of time that
28 the transition happened?

1 MR. PENDLETON: You know, we're trying
2 to nail that down still, your Honor. But
3 we -- it varied. In the southern part of the
4 service territory in the San Luis Obispo area
5 I believe that transition occurred in the
6 2014 timeframe. I don't have a precise date.
7 In the northern part of the service territory
8 there are some areas that are up near in the
9 Humboldt area that are electric-only. And we
10 believe that transition from electric to gas
11 occurred later than 2014 but still within the
12 time period of the OII.

13 ALJ ALLEN: Was electric operations
14 using the same system and subject to some of
15 the same issues that the OII identifies for
16 gas operations?

17 MR. PENDLETON: Two things on that,
18 your Honor. They were using the same
19 procedures that gas used. So even though
20 they were electric operations personnel they
21 were using the same procedures. And in the
22 Bates White report that PG&E commissioned the
23 late ticket counts would include those
24 electric distribution tickets whether marked
25 by electric personnel or gas. So in a sense
26 those locate and mark, that locate and mark
27 work is already included in the estimated
28 late ticket numbers from Bates White, if that

1 answers your question.

2 ALJ ALLEN: Yes. The other question I
3 had is that SED had identified a number of
4 issues in its motion, and I wanted to hear
5 from other parties as to whether they
6 believed those issues identified in the SED
7 motion are consistent within the scope of the
8 OII. I think they are, but if anyone has any
9 different opinions or clarifications, please
10 let me know.

11 PG&E.

12 MR. VALLEJO: Yeah. Thank you, your
13 Honor. The only question we would have is as
14 it relates to one of the questions about
15 whether some people received the right level
16 of training qualifications to do certain
17 work. We certainly don't have any objection
18 to -- and we're actively looking at that
19 issue, but it seems a different line of
20 inquiry than whether or not there were late
21 ticket issues. I know that how those were
22 reported versus how people were trained and
23 what specific qualifications they had. So
24 that was the only one that seemed to us kind
25 of qualitatively different than the thrust of
26 the OII.

27 ALJ ALLEN: Mr. Gruen, do you have a
28 response?

1 COMMISSIONER RECHTSCHAFFEN: Can you
2 specify which question you're talking about?

3 MR. VALLEJO: Yeah. Let me get to it.

4 MR. PENDLETON: The questions that SED
5 has laid out in their motion, the first one,
6 two, three, four questions as I read these
7 relate to qualified electrical workers being
8 available in a timely way in order for PG&E
9 locate and mark personnel to complete a
10 ticket, which in our response we indicated we
11 believe really are already part of the OII.
12 It's what is one reason a ticket might go
13 late where the locator needs a QEW to come
14 out and locate certain electrical facilities
15 and they show up late or they don't show up
16 in time to complete that ticket on time. It
17 would be already encompassed within the
18 issues that might cause a ticket to go late.

19 The one, two, three, four, five, the
20 last seven as I read these relate to what we
21 view as a somewhat different issue, which is
22 in SED's motion they describe some deposition
23 testimony and attach it to their motion which
24 indicates that there may have been instances
25 in which a QEW is needed to perform certain
26 work to locate an electric line. And a
27 locator who was not a QEW who is not
28 qualified to do that work went ahead and did

1 the QEW work. So that you have somebody who
2 is not qualified to do -- to locate certain
3 electric facilities performing that work.

4 And so we, in our motion what we
5 were trying to convey is that we view that as
6 a, you know, maybe in the same -- I mean it's
7 a locate and mark topic, and it's another QEW
8 issue. It seems to us to be sort of a subset
9 or a somewhat different issue. It's not
10 about underreporting of late tickets. It's
11 about whether people who weren't qualified to
12 do certain work did that work anyway. But we
13 don't oppose including it in the scope, but
14 we suggest it does seem to us to be a
15 different, somewhat different issue.

16 ALJ ALLEN: Thank you.

17 Mr. Gruen.

18 MR. GRUEN: Thank you, your Honor. We
19 appreciate PG&E's input on that. And we have
20 learned through a deposition of one of PG&E's
21 employees the discussion around a qualified
22 electrical worker, which is additional
23 information that we weren't aware of when we
24 had initially requested that the Commission
25 open the OII, when SED initially opened the
26 OII.

27 So that is indeed identified and
28 captured in the first four questions. And we

1 think it's captured within -- the actions of
2 qualified electrical workers we understand
3 from the deposition are germane to the
4 electric distribution system because their
5 work we understand in many instances from the
6 deposition was needed in order to complete
7 locate and mark on not only electric
8 distribution but gas.]

9 ALJ ALLEN: Mr. Gruen, for the second,
10 the last seven bullet points identified by
11 PG&E, is it SED's contention that those are
12 properly within the scope of the OII?

13 MR. GRUEN: Absolutely, your Honor.
14 Again, as we had not envisioned electric
15 distribution to be part of the OII when we
16 proposed -- when we requested the Commission
17 to approve it, these are specifically issues,
18 the identified falsification, the experience
19 of dig-ins, injuries and casualties, assuming
20 responsibility, and other safety-related
21 consequences, they are all intended to be
22 focused on electric distribution, which was
23 not envisioned when we had initially proposed
24 the OII. It was responsive to your Honor's
25 instruction of whether or not SED would
26 propose electric distribution within the
27 scope of the OII.

28 ALJ ALLEN: Thank you, Mr. Gruen.

1 Any other party wish to address this
2 issue?

3 (No response.)

4 ALJ ALLEN: We will address this in the
5 scoping memo, but thank you on that.

6 I also have PG&E's Motion to Clarify
7 Ruling on Redaction of Information in SED
8 Report. And I read that, and I'm somewhat
9 sympathetic to the motion that this relates
10 to a report and attachment that has hundreds
11 of PG&E employee names that do not relate to
12 locate and mark and are no way relevant to
13 this case in that document; is that correct?

14 MR. PENDLETON: That is correct, your
15 Honor.

16 ALJ ALLEN: Do other parties wish to
17 address PG&E's motion on redaction of
18 information in the SED report? Mr. Gruen.

19 MR. GRUEN: Your Honor, just minimal
20 point. Regarding your Honor's ruling, we
21 thought the ruling was amply clear, and we
22 understand the motion for clarification. If
23 your Honor wishes to further clarify in a
24 fashion requested by PG&E, SED would not
25 oppose.

26 One thing we would note, that SED
27 would recommend is that in providing the
28 revised redactions, that if your Honor were

1 to grant PG&E's motion, if PG&E provides the
2 revised redactions in accordance with that
3 ruling, that PG&E provide some sort of
4 declaration attesting the accuracy of those
5 redactions so that they do comport with the
6 ruling. The reason being, your Honor, we are
7 talking about hundreds of names here. And it
8 is -- PG&E has the best knowledge about
9 whether those names are indeed unrelated to
10 locate and mark. So we are relying on them,
11 and we appreciate the statement. We just
12 want to be sure that the redactions are
13 indeed accurate.

14 ALJ ALLEN: Are there any names in that
15 exhibit that SED plans to cite to in its
16 testimony or in this proceeding?

17 MR. GRUEN: Potentially, your Honor.
18 We have -- the exhibit is currently part of
19 SED's report that is entered into the record
20 pursuant to the instructions of the OII. So
21 the -- but SED -- I should say SED would not
22 intend to cite to the names that PG&E is
23 talking about.

24 ALJ ALLEN: Right, that was my
25 question.

26 MR. GRUEN: Okay.

27 ALJ ALLEN: Names that PG&E is talking
28 about. Does SED plan to cite any of those?

1 MR. GRUEN: No, your Honor.

2 ALJ ALLEN: My take is, I don't believe
3 that I need a declaration from PG&E. I think
4 the statement in the motion is adequate.
5 What I would do is I would grant the motion
6 with a couple of clarifications. Any names
7 that are in the SED report itself, not other
8 attachments, should remain unredacted. So I
9 don't want to have names that are redacted in
10 that attachment that appear elsewhere. That
11 way we can see if the same names are there
12 which, pursuant to the statements in your
13 motion, I would believe that that is not an
14 issue, but I want to make sure that we are
15 consistent across the board.

16 Was the PG&E -- was the document,
17 Exhibit 44 I believe that you were citing,
18 was that released to the public in general or
19 was that an internal PG&E document.

20 MR. VALLEJO: It is an internal PG&E
21 document, your Honor.

22 ALJ ALLEN: In case I'm inclined to the
23 grant it, does anyone else wish to be heard
24 on PG&E's motion?

25 MR. PENDLETON: I have one
26 clarification. I assume this would be the
27 case, but the examinations under oath, we
28 would apply the same approach, I imagine?

1 Because if a name appears in the report or in
2 the examinations under oath, then it would
3 not be redacted, and we would carry that
4 through to the attachment as well?

5 ALJ ALLEN: Yes, thank you.

6 With that, with those
7 clarifications, the motion to clarify the
8 ruling by PG&E on redaction of information is
9 granted.

10 I would like to turn to what may end
11 up being a slightly tricky issue, which is
12 scheduling and the possibility of hearings.

13 MR. LONG: Before we get to scheduling,
14 could I raise one issue related to scope?

15 ALJ ALLEN: Yes.

16 MR. LONG: As a reminder, in our
17 January 14th comments on the OII, we
18 didn't --

19 ALJ ALLEN: Mr. Long, your comments
20 were not filed, because you were not a party
21 yet.

22 MR. LONG: Right.

23 ALJ ALLEN: If you wish to make the
24 comments now, you may do so.

25 MR. LONG: Okay, good. Maybe they will
26 get filed now, now that we are a party.

27 ALJ ALLEN: Actually, what we will do
28 is we will take that up as to whether things

1 that were attempted to be filed before you
2 were a party should now be filed or not,
3 because some things may no longer be fresh or
4 relevant. So why don't you go ahead and make
5 whatever argument you want to make now, and
6 we can take up the housekeeping piece later.

7 MR. LONG: Okay. We were commenting to
8 the list of issues on page 13 of the OII.
9 And we were pointing out that there were two
10 issues that appeared elsewhere in the
11 discussion in the OII, but that did not make
12 the list. And I'll read these two issues for
13 the benefit of the record.

14 The first issue is: What additional
15 remedies, in addition to a fine or penalty,
16 are appropriate for any proven violations?
17 And we cited as the reference to the --
18 elsewhere in the OII where that appeared,
19 page 2, where the Commission referred to PG&E
20 being required to show cause as to why the
21 Commission should not impose penalties and/or
22 in any other forms of relief if any
23 violations are found. We thought that
24 appeared to be the Commission's intent, but
25 didn't make the list. That is number one.

26 Number two, I'll read what we
27 proposed as an issue to add to the list:
28 Whether PG&E management participated directly

1 or had knowledge of PG&E's falsification of
2 tickets so that they would not appear late.
3 And we base that inclusion of that issue on
4 page 7 where the OII states: Based on this
5 investigation, SED recommends investigating
6 whether PG&E management participated directly
7 or had knowledge of PG&E's falsification of
8 tickets so that they would not appear late.
9 We agree this issue should be included in the
10 OII.

11 So I think we were just trying to
12 clarify the scope. I think it was intended,
13 but it didn't quite make the list.

14 ALJ ALLEN: Thank you. We are
15 certainly interested in looking at
16 alternative remedies. I think that was also
17 something that we will get to as a general
18 discussion for parties to address is what
19 type of remedies would be appropriate.

20 One of the points I have in terms of
21 potentially penalties, remedies, and also
22 more significantly for the scope of hearings,
23 and this is what I'm primarily interested in.
24 I think if we go into the question of whether
25 Joe or Mary locate and mark personnel made a
26 specific phone call on a specific date, and
27 we get into the question of did they know
28 this would cause a problem with their time

1 recording. In other words, were they
2 intending to game the system or falsify a
3 record, or were they just doing their job and
4 entering something in the system. If we
5 start doing hearings on that level of detail,
6 I think this is going to be excruciatingly
7 long and painful and really just -- I don't
8 know how much value we will get by walking
9 through hundreds or thousands of locate and
10 mark to try to figure out whether they were
11 correct, incorrect, intended to falsify,
12 completely incident. I know that that may be
13 a concern, because there is a question of how
14 many violations there are.

15 The thing that really concerns me,
16 and that I want to see some focus on, is
17 essentially PG&E management's knowledge of
18 this problem and its failure to correct it
19 over time. Based on PG&E's responses to the
20 questions in the OII, essentially there is a
21 document dated March 14th that PG&E
22 submitted. There is indications to me in
23 there that PG&E, at least some level of
24 management, started understanding there was a
25 problem in 2009. There were steps taken in
26 2012 to try to correct the problem. Those
27 corrections did not work, and it wasn't until
28 2017 that PG&E really figured out there was a

1 problem and started taking more steps to
2 remedy them.

3 So from my perspective, that is my
4 bigger concern is management's knowledge of
5 this and inability or unwillingness to
6 address it. Rather than, you know, did 10
7 locate and mark employees know that they were
8 gaming the system or were they doing it -- or
9 they were just entering things appropriately.

10 In terms of the scope of testimony
11 and the scope of hearings, that is my
12 preference. I understand that SED and PG&E
13 have come up with proposed schedules. What I
14 think I would like to do at this time, and
15 then we will get to the question of remedies,
16 is given what I've said, whether these
17 schedules you believe are appropriate,
18 whether hearings are necessary, and anything
19 else about how we should proceed in terms of
20 the process of this proceeding.

21 Mr. Gruen or anyone else who is
22 ready to go.

23 COMMISSIONER RECHTSCHAFFEN: Can I just
24 interject, maybe out of order? But has SED
25 and PG&E entered into any kind of serious
26 settlement discussions yet? Let's just focus
27 on prior violations or past violations,
28 putting aside the future remedy.

1 MR. GRUEN: Thank you, Commissioner.
2 At this time SED and PG&E have not entered
3 into settlement discussions. We have just
4 started talking about entering into them.

5 COMMISSIONER RECHTSCHAFFEN: Do you
6 feel like you are in a position now, do you
7 need more data or discovery, from your
8 perspective?

9 And do you, PG&E, feel like you are
10 in a position now that you have information
11 to enter into serious discussions now?

12 MR. GRUEN: Thank you, Commissioner.
13 In our preliminary discussions, one thing
14 that SED raised to PG&E is given the
15 anticipation that --

16 ALJ ALLEN: Mr. Gruen, you probably
17 don't want to actually tell us what was in
18 your discussions with PG&E. You may tell us
19 where your status is.

20 MR. GRUEN: It wasn't subject to
21 Rule 12.6, but point taken, your Honor.

22 The status is that we would, in
23 light of the potential scope change, or now
24 if his Honor and you, Commissioner, choose to
25 add electric distribution to the scope, then
26 SED would need more facts with regards to
27 that portion. However, we think that with
28 regards to SED's report and on the natural

1 gas side, we likely have enough facts to
2 enter into settlement discussions.

3 COMMISSIONER RECHTSCHAFFEN: Okay.

4 MR. PENDLETON: Thank you, your Honor.
5 PG&E, as Mr. Gruen indicated, SED have been
6 talking just recently about starting some
7 settlement discussions. I think that one
8 possible factor we need to think about as we
9 look at starting those discussions is this
10 new issue that has come up as part of SED's
11 motion to include these alleged instances of
12 people who are in the QEWS performing QEW
13 work. That is a new issue that has arisen.
14 As we mentioned before, it seems a bit
15 different than the underreporting of whether
16 a ticket was timely or not. But we are
17 looking into that issue.

18 And so I think in terms of your
19 question, Commissioner, about whether we
20 think enough discovery has been done, I know
21 that we believe that we have in the record in
22 this proceeding the Guidepost investigation
23 that PG&E commissioned, as well as the Bates
24 White report. The preliminary investigation
25 that SED conducted was pretty lengthy in this
26 instance, and I think -- we believe there is
27 sufficient information to look at at least
28 exploring whether settlement might be a

1 possibility.

2 The reason I bring up this new QEW
3 qualifications issue is that has not been
4 part of the investigation to date. We are
5 looking into that. I think we could
6 certainly provide the results of that
7 investigation as needed so that that issue is
8 clarified, so that -- we certainly wouldn't
9 want to ignore the issue. It is a
10 significant issue to look at. We view it as
11 a new and sort of separate issue.

12 ALJ ALLEN: Thank you.

13 COMMISSIONER RECHTSCHAFFEN: Thank you.

14 ALJ ALLEN: One thing also that might
15 make it shorter if you don't reach a
16 settlement is whether there can be at least
17 some stipulation on some of the factual
18 issues that may obviate some of the need for
19 some of the hearing time.

20 In looking at the proposed schedule,
21 I see that --

22 MR. LONG: I'm sorry, your Honor.

23 ALJ ALLEN: Mr. Long.

24 MR. LONG: Do you mind if I commented
25 on -- your comments raised an issue. I hope
26 I'm not getting out ahead or contrary to
27 anything that SED is planning for its view of
28 this case. But there was a statement in

1 PG&E's 90-day report at pages 111 to 112 that
2 troubled me in connection with this issue of
3 what exactly -- how extensive are these
4 hearings going to have to be.]

5 And it was the statement that to
6 establish that particular tickets are late
7 the facts surrounding those tickets would
8 have to be reviewed on an individual basis.
9 And this was in reference to the Bates White
10 report and PG&E emphasizing that that was an
11 estimate and that was a conservative
12 estimate. And the implication seems to be,
13 going to your comments, your Honor, that PG&E
14 is going to insist that for any violation to
15 be found there needs to be a prove-up that
16 there was an incorrect ticket for each of
17 potentially tens of thousands of tickets.
18 And that seems to be a monumental waste of
19 time in my mind and not something that's
20 fair. I mean if PG&E wants to do that
21 analysis, then that would be fine, but then
22 that would need to be subject to discovery
23 and everything else. And that doesn't seem
24 to be a productive use of time.

25 So it seems like there needs to be
26 some sort of estimation process here in order
27 to figure out the number of incorrect late
28 tickets, which is going to be integrally

1 related to the number of violations.

2 So I mean I guess we need
3 clarification from PG&E. Are they going to
4 insist that or is their legal argument going
5 to be that there needs to be a prove-up for
6 each and every single ticket, or are they
7 open to the idea of some sort of estimation
8 process?

9 ALJ ALLEN: Some of the language here
10 is what gave me this concern that we're going
11 to have, you know, a locate and mark employee
12 up here to testify, undergo cross-examination
13 on each and every ticket and what their state
14 of mind was when they did it. Because Mr.
15 Long, I see this not only as a question of
16 how many tickets were incorrect or how many
17 tickets were reported incorrectly, but PG&E
18 has also raised the issue of whether this was
19 essentially an inadvertent -- I mean
20 falsification is not quite the word when it's
21 an inadvertent inaccuracy as opposed to an
22 intended misleading report.

23 And so I share those concerns that
24 this could be an extremely lengthy set of
25 hearings for going through thousands and
26 thousands of individual tickets. And so
27 that's part of the basis for my concern as to
28 what are we actually going to do in terms of

1 coming up with a number of violations.

2 MR. PENDLETON: If I may, your Honor.
3 The Bates White report, the purpose of that,
4 which PG&E commissioned as part of the
5 preliminary investigation, was to apply a
6 conservative methodology to how many late
7 tickets might there actually have been during
8 the time period. And so what you would have
9 from Bates White is that if you have, for
10 example, a ticket where that locator
11 indicated that they left a voice mail for the
12 excavator and there's no indication in the
13 notes that they actually spoke with the
14 excavator, under Bates White methodology
15 running this logic across, you know, millions
16 of tickets, it was designed to count that
17 ticket as late because we don't have an
18 indication that they actually spoke with the
19 excavator and renegotiated that start time.

20 What you would -- I think to show
21 that that ticket actually is late, it's more
22 complicated. You might actually talk to that
23 locator, and they'll say, if they remembered
24 that particular ticket they might have
25 actually spoken to the excavator a few
26 minutes later and didn't note it in the
27 notes, or there's some -- you would need to
28 understand the specifics of that ticket to

1 know if the ticket actually was late.

2 But for purposes of trying to figure
3 out how many tickets were late from an
4 estimation perspective, to Tom's point,
5 that's what the Bates White report did
6 because we couldn't -- it would have taken --
7 the number of hours to go through each and
8 every ticket and then potentially talk to the
9 locator, it's a tremendous undertaking.

10 And so we were trying to say for
11 purposes of responding to data requests from
12 SED and the preliminary investigation which
13 asked us how many late tickets did you have
14 during this time period, we said here's a
15 conservative estimate.

16 So I would caution against using the
17 Bates White report as sort of a definitive
18 summary of how many late tickets there were
19 because it was never intended for that
20 purpose. I don't know that it really solves
21 the problem that Tom is raising, but
22 that's --

23 ALJ ALLEN: I guess the question for
24 the parties is to what level they want to
25 litigate this. I mean I understand the
26 argument that the Bates White methodology is
27 somewhat inaccurate or crude. It's kind of a
28 rough, a rough count. So the question is in

1 terms of coming up with, say, a number of
2 violations, you know, what's a mechanism that
3 we could use that comes up with some --
4 that's workable, you know, and whether that's
5 something that the parties can stipulate to.
6 Because one of the things as I think a number
7 of the parties have raised and I think we're
8 interested in is the question of remedies.
9 And certainly I think that we're looking
10 at -- and I'll also be happy to hear from the
11 parties in terms of any kind of different
12 remedies than the conventional, you know, X
13 numbers of violations at X dollars per
14 violation type of calculation.

15 One question along those lines I
16 have is also how the parties see this
17 proceeding and any remedy in this proceeding
18 interacting with this Commission's safety
19 culture investigation, because there is a
20 kind of a -- there appears to be some overlap
21 with that. Granted that's not an
22 adjudicatory case and this is, but I'd be
23 interested in hearing what parties think of
24 the interaction between those two and what
25 types of remedies parties would think are
26 appropriate other than the straight, you
27 know, straight dollar fine. I'm not saying
28 we won't do a straight dollar fine, but

1 that's one that's always in our arsenal. And
2 I'm interested in hearing about other ones.

3 Mr. Gruen.

4 MR. GRUEN: Thank you, your Honor. If
5 I may, a couple of points to your earlier
6 statement. PG&E can correct me on this, but
7 my understanding is that PG&E has stipulated
8 to the facts in the Bates White report as
9 rough as the number estimates are with those
10 caveats. So I could stand corrected, but
11 that is my understanding to the extent that
12 may help with establishing some sort of
13 estimate for discussion about violations.

14 I would add that having said that,
15 the question about whether the late tickets
16 include or omit inaccurate information, our
17 understanding is that was more the purview of
18 the Guidepost investigation, PG&E's own
19 independent investigator. And our
20 understanding is that PG&E does -- from its
21 90-day report that it takes -- it corrects
22 some of the statements in there.

23 So there is still a clarification
24 about the statements in the Guidepost report
25 that could prompt the need for hearings from
26 a scheduling perspective.

27 With regards to your Honor's
28 question about the safety OII and the

1 overlap, your point is noted. I've done a
2 little bit of thinking on that. And I
3 believe your Honor presides over the safety
4 culture proceeding as well. And so while SED
5 hasn't specifically thought that, coordinated
6 on that point, perhaps there might be some
7 flexibility for overlapping or considering
8 any remedies that your Honor might and
9 commissioner, the Commission might find fit,
10 whether those could be included within the
11 context of the safety culture OII. There
12 might be flexibility from SED's perspective
13 on that.

14 ALJ ALLEN: And has SED given thought
15 to remedies other than a mandatory penalty?

16 MR. GRUEN: At this point really not.
17 Only at a very, very high cursory level,
18 things like auditing the records or
19 potentially monitoring them. But in terms of
20 actual remedy recommendations, we're not at
21 that point, your Honor.

22 ALJ ALLEN: Thank you.

23 PG&E.

24 MR. VALLEJO: So your Honor, I think
25 the response to your questions, one, I think
26 we would gladly and willingly entertain some
27 sort of a proxy to come up with, you know,
28 number of violations. And we can engage in

1 those discussions with SED and the parties to
2 come up with that.

3 Mr. Gruen's point about us
4 stipulating to the Bates White report is
5 correct in so far as the Bates White report
6 goes. That is, it states that it is not
7 intended to be a formulaic penalty
8 calculation. So we have not stipulated to
9 that.

10 As to the remedies and alternative
11 penalties, PG&E is very open to that and
12 again happily will entertain constructive
13 discussions with the parties and SED to come
14 up with a suite of remedies and penalties
15 that might be appropriate.

16 ALJ ALLEN: Thank you.

17 Other parties. Mr. Long.

18 MR. LONG: On the safety culture
19 potential overlap, I see that as well.
20 Because part of what is important about this
21 case is that it gives a window into a
22 particular breach of the safety culture. It
23 helps us see how the organization was
24 working. That's a little bit challenging in
25 a safety culture investigation. And I admit
26 I'm not the attorney for TURN in that case,
27 but I am somewhat familiar with it.

28 Whereas here we have a specific set

1 of facts that we can drill down into to
2 understand what went wrong in the safety
3 culture. So I do think that it will be
4 useful to think about remedies here and
5 perhaps find a way to bring those over into
6 the safety culture investigation because of
7 this, because of the dynamic I've just
8 described.

9 ALJ ALLEN: Thank you. Any other party
10 on this? Ms. -- I'm sorry. Can't see your
11 last name.

12 MS. KOSS: Koss.

13 ALJ ALLEN: Ms. Koss.

14 MS. KOSS: Rachael Koss for CCUE. I
15 just wanted to speak to the crossover of this
16 proceeding, safety culture proceeding, and I
17 guess it touches on penalties as well. And I
18 think, you know, there's two ways to look at
19 it. There's the traditional sense of the
20 penalty or punishment. There's also what
21 we're trying to do in the safety culture
22 proceeding which is come up with a real
23 solution for the existing problems. And so,
24 you know, maybe if we can try to get into
25 that mindset here as well is is not only the
26 traditional penalizing but really hunkering
27 down and thinking about, you know, what needs
28 to change to solve the problem and get

1 everything going in the right direction.

2 ALJ ALLEN: Thank you. Any other party
3 on this? Ms. O'Hara.

4 MS. O'HARA: Two points actually. So
5 OSA also adamantly supports including
6 remedies such as corrective measures to
7 prevent future violations in the scope of the
8 proceeding and to specifically identify
9 lessons learned from this OII that could be
10 carried over, and by identifying and having a
11 very accurate record of lessons learned that
12 could develop perhaps specific remedies here
13 as well as specific remedies in the safety
14 culture proceeding. That's one path forward.

15 My second point is to schedule, but
16 it's moving away from hearings. So I can
17 hold that for later if it's more appropriate
18 for later.

19 ALJ ALLEN: Okay. Thank you. Anything
20 more on these points so far?

21 Let's go ahead and move to the
22 scheduling. So in looking at the proposed
23 schedules of SED and PG&E. So I note that
24 both of them -- both of them assume hearings.
25 I was noting that SED has opening testimony,
26 then intervenor testimony, PG&E reply
27 testimony, and then rebuttal testimony. So
28 this is quite a lot of rounds of testimony.

1 And I'm curious as to the thinking behind all
2 of those. What testimony would SED be
3 providing other than its existing report?

4 MR. GRUEN: Thank you, your Honor. One
5 thing would be if your Honor sees fit to
6 include electric distribution within the
7 scope of the OII. There would likely -- SED
8 is envisioning that there may be additional
9 testimony on that topic and specifically the
10 issue that Mr. Pendleton identified regarding
11 qualified electric workers for PG&E.

12 I think I wanted to just echo and
13 amplify Mr. Long's statement about what --
14 the knowledge of management regarding
15 practice. And I believe your Honor referred
16 to it in a timeline sort of fashion. And so
17 to that end there -- depending on the results
18 of SED's discovery, we are currently
19 reviewing the 90-day report with the
20 knowledge and understanding of PG&E's
21 management with regards to these issues in
22 mind. And now that we have factual
23 information. Of course the 90-day report
24 came to light after SED's report. And so in
25 light of that, SED may prepare testimony on
26 that issue as well.

27 That's your Honor's direct question.
28 Regarding the rounds of testimony, we

1 borrowed from some of the other past OIIs
2 just as a means of creating a framework that
3 your Honor could entertain or not as you see
4 fit. But there are certain additional facts
5 that we would think would be valuable for
6 decisionmaking for consideration along the
7 lines of what I mentioned.

8 COMMISSIONER RECHTSCHAFFEN: Let me ask
9 you a followup question. I guess a little
10 bit awkward in the sense now we're in
11 litigation, but if we were not in litigation
12 and you started it doing inquiry into
13 qualified electrical workers, would SED
14 likely do another investigation and report
15 with findings about whether or not there were
16 violations? What would that lead to? Are we
17 substituting an investigatory report now for
18 just evidence that you would be presenting in
19 a hearing as a result of your investigation
20 to this point now?

21 MR. GRUEN: Yeah. Thank you,
22 Commissioner. I think that we have enough
23 given the discovery we've done since the law
24 and motion where we would suggest we have
25 enough to establish a prima facie showing
26 that electric distribution should be included
27 in the OII. We also understand that there
28 may be additional facts that come to light

1 that informs the litigation.

2 So we would -- although we think we
3 have enough on the merits of what we found to
4 recommend that electric distribution be
5 included in this OII, we think there are
6 additional facts. We understand PG&E's
7 statement about them doing their own
8 investigation with regards to qualified
9 electrical workers. And we think that that
10 information would be valuable to come to
11 light into the record. I hope that that
12 answers your question.

13 COMMISSIONER RECHTSCHAFFEN: I'm just
14 trying to figure out if there would be an
15 expedited way to come to a conclusion to
16 avoid hearings that you would do some work
17 where they would respond, and then you can
18 write up a report or findings which you would
19 do in the absence of litigation presumably if
20 SED was just an investigation. And that way
21 we wouldn't have to have two or three weeks
22 or a month of hearings to make the
23 determination about where you come out on
24 whether or not violations had occurred.

25 MR. GRUEN: Quite possibly,
26 Commissioner. In fact, part of the thinking
27 would be to see what facts PG&E provides
28 regarding qualified electrical workers and

1 then see if we can come to a stipulation on
2 those facts and other facts and enter into
3 settlement discussions promptly. We've made
4 just the very beginning overtures with
5 regards to that.

6 So we're mindful of a process that
7 might short circuit the need for litigation,
8 but of course the schedule is in case we
9 can't come to a stipulation of the
10 appropriate facts and whatnot. But we are
11 mindful of the need for and the efficiency
12 that that sort of process might provide.

13 ALJ ALLEN: I'd like to hear from other
14 parties in terms of their impression of both
15 the number of rounds of testimony and the
16 quarter of the testimony that's set out with
17 SED, intervenors, PG&E reply, and then
18 rebuttal. Do other parties have an opinion
19 on that? Mr. Long.

20 MR. LONG: Yes, your Honor. As Mr.
21 Gruen said, the approach that is in both
22 parties, SED's and PG&E's proposed schedule,
23 is the approach that is by and large the
24 approach that was followed in the San Bruno
25 trio investigations. SED and allied
26 intervenors as in those cases here have the
27 burden of proof. And therefore, it's
28 appropriate for SED and I would argue allied

1 intervenors have an opportunity to do
2 rebuttal testimony. PG&E and, you know, in a
3 rate case where they have the burden of proof
4 they always have rebuttal testimony. So
5 three rounds is typical in both rate cases
6 and in investigations, enforcement matters.

7 The SED proposed schedule includes
8 in the rebuttal testimony an opportunity for
9 intervenors to provide rebuttal testimony
10 whereas PG&E's does not. We support the SED
11 proposal, proposed schedule on that point,
12 and in large part for a practical reason,
13 again drawn on our experience in the San
14 Bruno investigations. PG&E had very large
15 amount of testimony that it presented in
16 its -- in the San Bruno investigations. SED
17 did its best to do rebuttal to that, but the
18 other parties in those cases were not allowed
19 the opportunity to submit rebuttal testimony.
20 And the result was I think it caused the
21 hearings to be much more protracted because
22 the only opportunity for other parties to
23 respond to PG&E's testimony was through
24 cross-examination and introduction of
25 exhibits through the evidentiary hearings
26 which added a considerable length to the
27 evidentiary hearings.

28 If we have the opportunity to submit

1 rebuttal testimony along with SED as long as
2 we're allied parties, then I think that has
3 the prospect of shortening the hearings
4 considerably. We don't have to address
5 all -- get out all our points in
6 cross-examination and admission of exhibits.
7 So I would just offer that the Commission can
8 learn from the experience in the San Bruno
9 investigations.

10 I have an additional point.

11 COMMISSIONER RECHTSCHAFFEN: I'm
12 curious. In this case earlier, you just
13 became a party an hour ago, but would you
14 envision offering testimony on the main case
15 as opposed to penalties and remedies?

16 MR. LONG: That was going to be my next
17 point. There I would like to follow the lead
18 of -- I would like there just to be some
19 clarity about how the Commission would like
20 to do it.

21 Right now in SED's report they don't
22 get specific about what remedies they're
23 seeking, what penalties or fines they're
24 seeking or what other remedies. I don't know
25 if they intend to in their -- in their
26 testimony that they would be filing, you
27 know, under the schedule, their opening
28 testimony.

1 If it's going to wait for briefs,
2 we'll wait for briefs. But if the Commission
3 would like to hear from the parties earlier
4 on that, you know, we could do that. We
5 could present testimony on remedies and
6 penalties when we have our opportunity. And
7 then we could, you know, hear from PG&E on
8 their response. To me that strikes me as a
9 better way to develop the record, but I would
10 defer to the judgment of the Commission. And
11 I'd also be interested to hear from SED about
12 their thinking on that.

13 ALJ ALLEN: Thank you.

14 Ms. Lee.

15 MS. LEE: Your Honor, thank you. Diana
16 Lee for Public Advocates Office. I'd like to
17 offer a possible different approach to the
18 consideration of remedies. We think that the
19 Commission should consider making a
20 determination on liability first, and then
21 after that determination has been made or if
22 PG&E and SED can stipulate that this was the
23 scope of the violations in whatever the scope
24 of the case is. After that then parties
25 could focus their remedies on exactly what
26 the Commission's determined or the agreed
27 upon violations were instead of trying to
28 litigate them both at the same time. We

1 think that that might be more efficient and
2 allow parties to focus on -- the Commission
3 to focus on what the actual violations were
4 determined to be.

5 ALJ ALLEN: Thank you.

6 Any other party?

7 MR. VALLEJO: Thank you, your Honor. I
8 think I would just respond to one issue that
9 Mr. Long brought up, and that is the notion
10 that the intervenors also bear the burden of
11 proof here. I don't think that's correct. I
12 think SED bears the burden of proof. And
13 appropriately they should have the last word
14 in so far as the testimony goes. But I don't
15 think the intervenors stand in the same shoes
16 as SED as the, you know, for lack of a better
17 term, sort of the prosecuting entity that SED
18 is. So that's why we limited the rebuttal to
19 SED, which we think is appropriate.

20 Otherwise it does put PG&E at a
21 position of not being able to -- basically
22 receiving rebuttal testimony from, you know,
23 multiple parties and then going right into
24 hearings assuming the Commission grants those
25 hearings. As the defendant we believe that
26 puts us at a material disadvantage. And
27 again, we think it's appropriate for SED to
28 have that but not the intervenors.

1 ALJ ALLEN: I'd like to hear from other
2 parties, particularly PG&E, SED, or any
3 others about Ms. Lee's suggestion of
4 essentially separating like the violations
5 question, the liability question from the
6 remedies question and addressing those
7 separately. And certainly if there's a
8 stipulation to number of violations that
9 would effectively do that. But if it's
10 litigated, what's PG&E's response to that
11 suggestion?

12 MR. VALLEJO: I think we'd be open to
13 that, your Honor. I think there could be
14 some efficiencies in that. To your point, if
15 we can find some sort of a way to stipulate
16 to some either number or way to come up with
17 violations, that would certainly help
18 streamline the process. So we'd be open to
19 discussing it and hearing ideas and, you
20 know, meeting and conferring on those. So we
21 think there's value in that discussion.

22 ALJ ALLEN: Thank you.

23 Mr. Gruen.

24 MR. GRUEN: One thought comes to mind.
25 SED would also be open to that suggestion,
26 just provided perhaps that if settlement
27 proves successful that it wouldn't be tracked
28 in the same sort of bifurcated way, that

1 settlement could discuss, that is, both
2 liability as well as remedies in one fell
3 swoop. And if the parties in fact come up
4 with something that is -- includes both
5 things and can propose it in a settlement,
6 perhaps there's an efficiency there as well.
7 But aside from that, on the litigation path
8 we're certainly open to that.

9 ALJ ALLEN: Thank you. I'd just
10 indicate that this Commission has a strong
11 interest in, I think on the remedy side given
12 the safety culture OII and the other things,
13 so that I think there might more amenability
14 to a settlement on the violations and/or
15 conventional penalties than -- while we
16 certainly would consider looking at the
17 remedies, that's certainly something that the
18 Commission from a policy standpoint is going
19 to be very interested in.

20 Anything else on the schedule from
21 the parties?

22 Any other matters that need to be
23 addressed today?

24 MS. KOSS: Your Honor, Rachael Koss for
25 CCUE. We filed an emergency motion on your
26 Honor's ruling on the redaction. We weren't
27 a party at the time. It did not get formally
28 filed. We have a remaining issue with the

1 redaction or lack of redaction for what is
2 now as I understand it a very small number of
3 Local 1245 members, but it is a serious
4 concern to CCUE.]

5 So should we --

6 ALJ ALLEN: You may address it now.

7 MS. KOSS: Okay. So my understanding
8 talking with PG&E and SED is that all of the
9 rank and file employees' names will be
10 redacted, which is the majority of 1245
11 members. Although, there are a small number
12 of 1245 members named in the report that were
13 rotated through supervisory positions for a
14 temporary period of time. They don't make
15 policy. They are not managers. But they are
16 tagged as supervisors in the report.

17 So we had requested that all 1245,
18 well, that all staff-level names be redacted.
19 These small number of individuals fall into
20 sort of an odd category where they are 1245
21 members. They are not supervisors, but they
22 were rotated through PG&E's process for a
23 temporary time as supervisors.

24 ALJ ALLEN: Is there a particular
25 reason that these people have a specific
26 interest in keeping their names private?

27 MS. KOSS: So there have been a lot of
28 threats against 1245 members, windows have

1 been broken on trucks. It is a safety
2 concern. We don't see a benefit to having
3 their names be released to the public.

4 ALJ ALLEN: Is there anything in this
5 report for these employees that indicates
6 that this would cause them further danger?

7 MS. KOSS: I think just being tied to
8 misconduct, what is perceived as misconduct
9 in light of fires, in light of Judge Alsup's
10 ruling and statements. It has just been --

11 ALJ ALLEN: Is there anything in the
12 report that basically shows that these
13 particular employees engaged in misconduct,
14 that then people would take vengeance on them
15 for?

16 MS. KOSS: Yes.

17 ALJ ALLEN: Okay. And that was in
18 their role as a temporary supervisor?

19 MS. KOSS: Correct. So what is in the
20 report is -- refers to these individuals as
21 knowing or assuming to have known that there
22 was misconduct.

23 ALJ ALLEN: Are these mentioned in the
24 report itself or in the attachments to the
25 report?

26 MS. KOSS: I would have to double check
27 that. I am not positive at this moment.

28 ALJ ALLEN: Okay. I'll take your

1 request under submission.

2 MS. KOSS: Thank you. I'm happy to
3 submit something in writing, if that would
4 clarify.

5 ALJ ALLEN: Thank you. If I decide it
6 is necessary, I will request that.

7 MS. KOSS: Thank you.

8 ALJ ALLEN: Thank you. Anything that
9 we need to address today?

10 (No response.)

11 ALJ ALLEN: Thank you very much. The
12 prehearing conference is adjourned.

13 (Whereupon, at the hour of 2:32
14 p.m., this Prehearing Conference having
15 concluded, the Commission then
adjourned.)

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

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CSR NO. 11320


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