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

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Dated: May 20, 2016

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**I. INTRODUCTION**

After a productive meet and confer process, the Parties<sup>1/</sup> are left with only one dispute: whether this case – already on track to more than triple in scope – should be further expanded to include 21 additional communications that everyone agrees do not reflect ex parte violations on their face. This investigation was initiated to determine the appropriate penalties for communications that were self-reported by PG&E and to determine whether certain other alleged ex parte communications violated the Commission’s rules. These 21 additional communications are not PG&E self-reports nor are they alleged to be ex parte communications; therefore, PG&E respectfully recommends that the Commission decline to include these 21 additional communications in the scope of this proceeding.

**II. MEET AND CONFER**

During the meet and confer process,<sup>2/</sup> the Non-PG&E Parties asked PG&E to agree to recommend that the Commission expand the scope of this proceeding to include more than 100

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1/ 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 Pacific Gas and Electric Company (“PG&E”), they are referred to as the “Parties.”

2/ The Parties engaged in a detailed and substantive meet and confer process pursuant to the Commission’s *Ruling Directing Parties to Engage in Meet and Confer Process and Setting Prehearing Conference* (“Meet and Confer Order”), dated January 8, 2016.

additional communications. For the vast majority of these communications, PG&E agreed. In total, PG&E agreed to recommend that the Commission expand the scope of this proceeding to include 159 communications, even though PG&E does not agree that each of these reflects an ex parte violation.

For 135 of these communications, the Parties agreed that any factual issues could be addressed through stipulations. These communications are referred to in the Joint Meet and Confer Process Report<sup>3/</sup> as “Category 1.” *See* Exhibit 1. The Non-PG&E Parties felt 24 other communications were ex parte violations, and that discovery concerning them was necessary. Accordingly, PG&E agreed to conduct several months of diligence to answer the Non-PG&E Parties’ Data Requests with regards to these 24 communications. These are referred to in the Joint Meet and Confer Process Report as “Category 2.” *See* Exhibit 1.

This brief concerns a third category consisting of 21 additional communications (the “21 Additional Communications” or the “21”).<sup>4/</sup> For each of these 21 Additional Communications, the Parties agree that they do not themselves appear to be ex parte communications. The Non-PG&E Parties seek to include the 21 in this proceeding to determine whether the communication described actually occurred, and if so, whether it was improper. But, the events described in the 21 emails themselves do not indicate any ex parte violation occurred, and adding them would require substantial diligence which will be more difficult to conduct efficiently given how poorly defined many of the communications are.

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3/ *Joint Meet and Confer Process Report of the City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates, the Safety and Enforcement Division, The Utility Reform Network, and Pacific Gas and Electric Company* (“Joint Meet and Confer Process Report”), filed on April 18, 2016.

4/ PG&E has attached the 21 Additional Communications (3-1 through 3-21) for the Commission’s convenience as Exhibit 2. In communications 3-1, 3-2, 3-3 and 3-21, PG&E has redacted the names and other contact information of employees below the director level and certain third parties.

### III. ARGUMENT

#### A. The 21 Additional Communications Are Not Ex Parte Communications and Should Not Be Included in the Scope of this Proceeding.

This proceeding was instituted to determine penalties for communications for which PG&E provided late-filed notices of improper or ex parte communications, and to determine whether PG&E violated any rules with regard to certain communications that the City of San Bruno alleged were ex parte communications.<sup>5/</sup> The 21 Additional Communications do not belong within the scope of this proceeding because they fall into neither category. To the contrary – all Parties agree that the 21 do not appear to be ex parte violations themselves.

The majority of the 21 concern site visits, facility tours, ride-alongs, and other permissible interactions. These types of interactions keep the Commission informed and are part of the regulatory process. Under Commission rules, “[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 contacts are the “bread and butter” of the administrative process. D.07-07-020 at 23 (citation and internal quotation marks omitted).

Communication 3-18 is an example. It includes a quote of a Commissioner describing a tour of PG&E’s Gas Control Center in San Ramon and encouraging colleagues and other interested individuals also to tour the facility. The Commissioner stated: “[T]his was not a lobbying meeting[,] this was a tour of the facility that just has remarkable capabilities beyond anything that PG&E had done before . . . .” In the email chain reflected in 3-18, a PG&E employee suggested asking if other Commissioners also would tour the facility.

Others among the 21 also show routine interactions. In communication 3-17, a PG&E employee emails a Commissioner and the Commissioner’s advisor inviting them to tour PG&E’s Gas Transmission and Distribution Operations Center. And, in 3-3, several PG&E personnel

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<sup>5/</sup> *Commission’s 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 (“OII Order”),* dated November 19, 2015.

discuss preparing for an upcoming Lawrence Livermore National Laboratory visit where a Commissioner is expected to be present. One PG&E employee specifically notes that “[w]e need to be careful that this meeting stays away from issues being considered in the gas OIR or we risk having to file an ex parte – given that we are participating in the meeting.”

Some of the 21 refer to past meetings or interactions but do not indicate that an ex parte communication took place. In communication 3-4, a Commissioner recounts telling a PG&E executive that the Commissioner wants PG&E to be successful within the context of investor relations. Communication 3-10 notes only that after a Commission meeting, a Commissioner commented upon being impressed with a PG&E executive’s performance at the press conference. These types of comments should not serve as the basis for discovery or the expansion of this case.

A few of the 21 Additional Communications refer to joint meals that may or may not have taken place or to unspecified encounters between PG&E employees and certain Commissioners. Without anything more, these communications do not justify inclusion in this proceeding.

Furthermore, many of the additional communications jointly recommended by the Parties come from among the more than 20,000 internal emails and attachments produced by PG&E in its most recent GT&S case<sup>6/</sup> and the approximately 65,000 emails previously produced by PG&E and published on the Commission’s website.<sup>7/</sup> There is no shortage of information available to the Commission and the Parties in this matter. The events referenced in the 21 emails do not indicate that any ex parte violations occurred. Adding these to the scope of the proceeding would require substantial due diligence for communications that are poorly defined and therefore even more difficult to subject to efficient and reasonable due diligence.

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6/ A.13-12-012.

7/ Available at <ftp://ftp2.cpuc.ca.gov/PG&E20150130ResponseToA1312012Ruling>.

#### IV. CONCLUSION

PG&E respectfully requests that the Commission decline to add the 21 Additional Communications to this proceeding.

Respectfully Submitted,

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