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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2017. (U39M)	Application 15-09-001 (Filed September 1, 2015)

COMMENT ON SUPPLEMENTED NOTICE OF EX PARTE COMMUNICATIONS FILED BY PG&E

EX PARTE WRITTEN COMMUNICATION TO ALL COMMISSIONERS AUTHORIZED BY PUBLIC UTILITIES CODE 1701.3(h)(4)

SCOTT J. RAFFERTY

1913 Whitecliff Court
Walnut Creek, California 94596
(202)-380-5525
E-mail: rafferty@gmail.com

Attorney for
COLLABORATIVE APPROACHES TO
UTILITY SAFETY ENFORCEMNT

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Early Friday afternoon, April 21, 2017, PG&E invited CAUSE, which had mentioned that it was about to make a timely request for equal time from the three ex parte communications with advisors to take place today, to attend the meetings already granted (jointly) to PG&E, ORA, and TURN. CAUSE was pleased to do so for two reasons: (1) as a courtesy to the advisors, relieving them of a possible additional meeting, and (2) as a demonstration of unified support for the settlement and for the concessions that the settling parties had agreed to make. CAUSE had differed from other settling parties as to how the Commission should evaluate settlements and whether it was appropriate for the Commission to propose changes that the Commission believed the public interest required. PG&E notified the Commission that CAUSE would join the ex parte meeting on Monday morning, April 24, 2017. Apparently, sometime Tuesday afternoon, staff notified PG&E that CAUSE would not be allowed to attend, but the Commission does not appear to have attempted any notice to CAUSE, who learned of the exclusion en route to the Commission. It is an additional concern that legal staff did not disclose this decision to the service list.

Prior to leaving for their ex parte meeting, PG&E advised CAUSE that, notwithstanding Rule 8.3(c)(3), the Commission may view written communications to Commissioners sent after midnight tonight as a violation of SB 215. If so, any later communication would subject the undersigned to a $50,000 fine under Public Utilities Code §1701.6. This seems a bizarre outcome, since the PG&E, TURN and ORA will be permitted and required to reduce their communications to writing within three days. But the ALJ has already imposed a far greater penalty on CAUSE by arbitrarily denying eligibility for intervenor compensation after hundreds of hours of professional time – and 14 months after the statutory deadline. To avoid the $50,000 fine, CAUSE telephoned the General Counsel to speak to an attorney regarding documented sources for current practices and penal provisions related to ex parte communications. This call was not returned.

This communication has two purposes.

I. TODAY's INTENDED MEETINGS WOULD HAVE DEMONSTRATED THAT THE MODIFICATIONS ACCEPTED BY THE SETTLING PARTIES ADDRESS CAUSE's WELL-GROUNDED POSITION ABOUT THE PUBLIC INTEREST DETERMINATION.

CAUSE wishes to affirm its support for the settlement, and the settlement modified in the manner recommended by the proposed decisions (PD and APD) and accepted by the settling parties. The settling parties' comments on the APD reconcile two different approaches to the evaluation of this settlement. CAUSE had been unable to join other settling parties in their comments on the proposed decision, because it advocated a different standard for evaluation. CAUSE is skeptical of settlements before hearing, and was not able to develop the record on safety as it intended. More critically, CAUSE believed that the Commission could require the parties to modify provisions that were inconsistent with the public interest, provided that the utility was made whole for any impact of the change.[1] To defer to a settlement in such a case impermissibly delegates the constitutional authority to determine the public interest. Maintaining this position, when no other party did, has been a "substantial contribution" to the resolution of the case. The unanimous acquiescence by the settling parties in the modifications proposed in the APD by all settling parties preserves the principle that CAUSE, and only CAUSE, maintained.

For CAUSE to stand shoulder to shoulder with PG&E, TURN, and ORA at the proposed meetings would have demonstrated that the constitutional concerns about the evaluation of the settlement have been respected and reconciled. The irony, of course, is that the Proposed Decision arbitrarily recommends finding that the only party to defend the institutional prerogatives of the Commission be found ineligible to receive intervenor compensation. This is exactly what happened 12 years ago, when the PD punished Peninsula Ratepayers Association ("PRA") for disputing that the bankruptcy court could expressly preempt Commission rate regulation. After Commissioners granted ex

[1] CAUSE also questioned earlier Commission decisions purporting to apply a "class-action" standard to approval, because the public cannot opt out of a rate case (and because the decisions understated the scrutiny courts apply to those settlements.

parte meetings, D.03-12-035 modified the settlement, and reversed the PD's ruling on intervenor compensation and the exclusion of PRA's evidence. In this case, the Commission should do the same.[2]

II. THE STAFF's ACTIONS TODAY DEFY THE LEGISLATURE's DEMAND FOR TRANSPARENCY.

Out of an abundance of caution, CAUSE has filed and served three notices in connection with each of the ex parte meetings that it has sought after SB 215 became effective on January 1, 2017 – one advising the parties that it had made a request, one advising them when the request was granted, and one documenting what was said after the meeting. In the case of Commissioner's advisors, Rule 8.2 requires only the post-meeting notice. In this case, CAUSE relied upon compliance by the largest utility in the State, the good faith of which he does not doubt. When the state's largest utility, who attends all workshops and reads all the guidance not available on the website, does not understand what "rules" the Commission is applying, it is because there are no rules.

SB 215 was enacted on September 29, 2015, seven months ago, after years of failed attempts by the Legislature to encourage the Commission to reform its ex parte rules. It is inexcusable that the Rules of Practice and Procedure have still not be amended *or even annotated* in any way to conform to SB 215 in every case in which there is an additional or conflicting statutory requirement.[3] Today, the Commission staff subverted the two essential purposes of the statute as applied to rate cases: (1) to ensure that "interests with a less prominent issue … have their concerns heard" and (2) to enable an "independent judiciary" adjudicate violations "[rather than] the CPUC itself." Senate Floor Analysis at 8. The Commission is exempt for the regularity required by the Administrative Procedures Act (Gov. Code 11351), but by acting without rules, the staff has placed the Commission above the law.

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[2] PRA also testified to the Senate Utilities Committee, which eventually enacted SB 612 (2016), requiring the Commission to streamline the initial determination and stop "go along to get along" – coercing intervenors by withholding eligibility determinations.

[3] Nor is there any indication of conflict or potential revision in the "Current Proposed Changes to the Rules of Practice and Procedure" or the "Practitioner's Guide to Ex Parte Communications." Other website resources, such as "Public Participation Series #6" direct the public to Rule 8 without qualification. The "transparency" page has a description of "new reporting procedures," which also links to Rule 8 without qualification (and a "communications log" that has been dormant for five months.

Public Utilities Code §1701.3(h)(2) states: "(2) Oral communications may be permitted by a decisionmaker if all parties are given not less than three working days' notice." The permission is "by a [specific] decisionmaker," but is not restricted to a specific party. On the contrary, the evident purpose of prior notice is to give other parties an opportunity to seek equivalent input. If a different decision-maker showed up at a scheduled meeting, there would be an obvious violation of this section. But for an additional party to attend, with the consent of those initially requesting the meeting and after notice to all other parties, is the fulfillment of the promise of this provision. Even if a contorted reading of the section could somehow prevent the added party from speaking, staff's exclusion of a party from ***witnessing*** the communication ***required*** the other parties to communicate in secret. This is a blazen attempt to return to the practices that made statutory reform so necessary. By failing to communicate their action to CAUSE, and to place in on the record, the anonymous staff who violated SB 215 today have granted themselves the opportunity to create post-hoc rationalizations for these actions.[4]

Adding to this comedy of errors is a document dated February 2017, but "effective 1/1/17," entitled "Ex Parte Logistics."[5] Oddly, this document (at 18) requires that the "meeting *request* … must be made within 3 working days *after* the meeting."[6] In this context, the admonition not "to change the attendees" simply means telling the truth about something that has already happened. According to PG&E, today's interpretation allowed them to change internal attendees, but not to add parties, which is the opposite of what transparency would require.

CAUSE is no stranger to secret rules and formalistic interpretations. Comic in the abstract, arbitrary actions have unjust consequences. CAUSE and PRA were created based on the precedent of Aglet Consumer Alliance, which received Commission reimbursement in many, many cases over more

[4] Another puzzle is the failure of the staff to explain why a party claims to have been granted a meeting on May 3, 2017.
[5] It is also "preliminary and subject to outcome of formal proceeding."
[6] The document (at 7, item iii) also proposes to destroy the long-respected right of intervenors to have compensation matters determined on the record.

than a decade. Over 14 months, the ALJ invented a series of new, literally unprecedented requirements, unstated in any rule, that have required CAUSE to spend hundreds of hours in compliance[7] or in research to defend its members' constitutional rights. Neither Aglet nor any other intervenor faced these strange demands. For its part, the docketing office "erroneously" rejected filing after filing based on the fiction that they did not comply with the international standard for PDF/A, an abuse that stopped only when CAUSE began attaching screenshots of the metadata. Then, it began rejecting the form of electronic signature accepted in all California courts because CAUSE did not include three secret characters. CAUSE has offered to provide evidence that its members include only PG&E residential ratepayers to auditors, but it simply cannot break its commitment to preserve members' privacy. These members have contributed no funds; the Commission may not demand their identities, let alone invade the privacy of their home address, simply so the ALJ can determine whether CAUSE's members are a political threat to arbitrary actions. NAACP v. Alabama, 357 U.S. 449 (1958); Britt v. Superior Court, 20 Cal.3d 844, 862. & n. 5 (1978); *see* Amended NOI: Motion to Be Relieved of Conditions, at 27, *ff*.

CONCLUSION

CAUSE has made substantial contributions to this proceeding, even though its request to be found eligibility for compensation was unlawfully held in suspense for 14 months before being arbitrarily rejected. CAUSE intervened as an advocate for safety when no one else would. After examining the testimony carefully, CAUSE determined that it was not feasible to obtain a better outcome after hearing without the support of TURN or ORA. CAUSE supported the settlement, but it also defended the constitutional duty of the Commission to ensure that settlements conform to the public interest, when no one else would. The acceptance of the APD's proposals by the other settling parties validates this very important principle.

[7] Initially, CAUSE was happy to jump as high as the ALJ requested. Producing UA-100, which had been misplaced in processing at the office of Secretary of State, required two trips to Sacramento and an intervention by the Secretary's chief of staff. It has nothing to do with CAUSE's existence or capacity as a legal entity.

Finally, CAUSE submits that failing to modify Rule 8, and substituting ad hoc determinations for legal rules, is not consistent with SB 215 or the requirements of due process. CAUSE will have made another substantial contribution if the Commission promulgates written rules that conform with the law. The Commission should not only find CAUSE eligible for compensation, but should ensure that the ALJ fairly compensates CAUSE, including full reimbursement for time spent establishing its eligibility.

Dated: April 26, 2017

/s/ SCOTT J. RAFFERTY
1913 Whitecliff Court
Walnut Creek, California 94596
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E-mail: rafferty@gmail.com

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