



**FILED**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

555 YVR, LLC,

Complainant,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 12-04-028  
(Filed April 30, 2012)

**ASSIGNED COMMISSIONER'S AND ADMINISTRATIVE LAW JUDGE'S  
SCOPING MEMO AND RULING**

**1. Summary**

555 YVR, LLC (Complainant),<sup>1</sup> alleges that Pacific Gas and Electric Company (PG&E) failed to refund charges as required under a line extension agreement. Pursuant to Rule 7.3(a),<sup>2</sup> this ruling sets forth the procedural schedule, assigns a presiding officer, and addresses the scope of the proceeding.

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<sup>1</sup> The caption for this proceeding has been updated to reflect the updated identity of the Complainant as set forth in the Amended Complaint filed by Complainant on June 27, 2012.

<sup>2</sup> All references to Rules are to the Commission's Rules of Practice and Procedure.

## **2. The Parties**

Complainant is a housing developer. This complaint was originally filed by a related company named TDP – Walnut Creek – 108, LLC. PG&E is an investor-owned utility providing electricity service under the jurisdiction of the Commission.

## **3. Facts and Procedural Background**

Complainant alleges that it is entitled to a \$1,251.75 refund for each of 94 meters installed by PG&E and that, as of the date of the complaint, PG&E had refunded only a portion of the refund. PG&E asserts that pursuant to the written agreement between the parties, and PG&E's tariff, no further refund is required. Complainant asserts that its claim is based in part on PG&E's conduct after the written agreement was entered into.

Complainant filed its complaint on April 20, 2012, and PG&E filed its answer on June 11, 2012.

The parties submitted a Joint Prehearing Conference (PHC) Statement on June 22, 2012. A PHC was held on June 25, 2012.

Because 555 YVR, LLC (not TDP – Walnut Creek – 108, LLC) is the counterparty to the written agreement, counsel for Complainant proposed correcting the party name by filing an Amended Complaint. PG&E did not object and the Administrative Law Judge (ALJ) granted Complainant leave to file the amended complaint. Complainant filed the Amended Complaint on June 27, 2012.

## **4. Scope of the Proceeding**

In determining the scope of this proceeding, we have considered the complaint, the answer, the Joint PHC Statement and the PHC conducted on June 25, 2012.

By statute and rule, complaints may be made by any person “setting forth any act or thing done or omitted to be done by any public utility [...] in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission” (Pub. Util. Code § 1702) and “... shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired” (Rule 4.2).

In their Joint PHC Statement, the parties agreed there is no factual dispute concerning the identity of the agreement for the line extension to the residential project. In addition, the parties stated that they anticipate that they will be able to agree on certain facts relating to the agreement, such as the amounts paid and the amounts refunded.

Accordingly, the issues to be determined in this proceeding are:

1. Whether the Complainant is entitled to additional refunds under a line extension agreement for a residential project in Walnut Creek;
2. Whether this dispute is governed exclusively by the tariff rules and terms and the conditions of the written agreement or if it is governed in part by PG&E’s conduct after the parties entered into the agreement; and
3. To the extent necessary in connection with the legal issues above, what was PG&E’s conduct after the parties entered into the agreement?

## **5. Discovery**

The assigned ALJ informed the parties at the PHC that they could immediately engage in discovery. Discovery will be conducted according to Article 11 of the Commission’s Rules. If the parties have discovery disputes they are unable to resolve through meet-and-confer sessions, they must raise these

disputes under the Commission's Law and Motion procedure as soon as possible to avoid unnecessary delay in the proceeding. (See Rule 11.3.)

## 6. Schedule

The following schedule was adopted at the PHC:

Event	Date/Location (if applicable)
Complete Alternative Dispute Resolution (or, file Joint Settlement Status Statement)	August 30, 2012
Complainant's Opening Testimony, served	October 15, 2012
Defendant's Reply Testimony, served	November 5, 2012
Complainant's Rebuttal Testimony, served	November 26, 2012
Discovery Cutoff	December 1, 2012
Evidentiary Hearings	December 17-18, 2012, at 10:00 a.m., in the Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Opening Briefs, filed concurrently	January 14, 2013
Reply Briefs, filed concurrently and submission (unless otherwise noted by ALJ)	January 28, 2013
Proposed Decision (60 days after submission)	March 28, 2013

If so required, the presiding officer may alter this schedule as required to promote the efficient and fair resolution of the investigation. Pursuant to Public Utilities Code § 1701.2, this proceeding shall be resolved within 12 months of its

initiation unless the Commission makes findings as to why that deadline cannot be met and issues an order extending that deadline.

The parties have agreed to discuss alternative dispute resolution mechanisms and at the parties' request, a mediator from the Commission's alternative dispute resolution program has been assigned.

## **7. Filings and Service of Documents**

All documents required to be filed in the proceeding shall be filed with the Commission's Docket Office in accordance with the Rules. Article 1 of the Rules contains all of the Commission's filing requirements. Prepared testimony is only served, not filed. The parties must serve all prepared testimony and other documents required to be filed in this proceeding on each other, with a copy to the assigned ALJ, by the deadlines stated in this ruling. Service must be via personal delivery, facsimile, overnight mail or by e-mail. The parties must comply with Rule 1.10 regarding the service of documents via e-mail. As previously noted, prepared testimony should not be filed with the Docket Office but is to be served on the opposing party and all members of the service list and submitted to the assigned ALJ. Parties are encouraged to file and serve electronically, whenever possible, as it speeds processing of the filings and allows them to be posted on the Commission's website. In addition, a hard copy of all documents filed and served must be sent to the assigned ALJ.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: C.12-04-028, 555 YVR v. PG&E. In addition, the party sending the e-mail should briefly describe the nature of the attached communication; for example, *Comments*. The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and

serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The service list on the Commission's website meets that definition. Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **8. Exhibits**

The parties must comply with Rule 13.7 regarding exhibits.

## **9. Category of Proceeding and Need for Hearing**

Pursuant to Rule 7.1(c), the Commission categorized this matter as adjudicatory and determined that hearings were necessary. No party appealed this determination as to categorization so that determination is now final.

## **10. Ex Parte Requirements**

This matter has been categorized as adjudicatory. Accordingly, *ex parte* communications are prohibited pursuant to Rule 8.3(b).

## **11. Assignment of Proceeding**

Commissioner Michel P. Florio is the assigned Commissioner and ALJ Jeanne M. McKinney is the Presiding Officer.

**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule is as set forth herein, and may be modified by the assigned Administrative Law Judge (ALJ) if needed.
3. The presiding officer will be ALJ Jeanne M. McKinney.

4. This proceeding is categorized as adjudicatory pursuant to Rule 7.1(c) of the Commission's Rules of Practice and Procedure, and hearings are necessary.

5. *Ex Parte* communications are prohibited in adjudicatory proceedings, in accordance with Public Utilities Code Section 1701.2(b) and Rule 8.3(b) of the Commission's Rules of Practice and Procedure.

Dated August 9, 2012, at San Francisco, California.

/s/ MICHEL PETER FLORIO

Michel Peter Florio  
Assigned Commissioner

/s/ JEANNE M. MCKINNEY

Jeanne M. McKinney  
Administrative Law Judge