

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



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Order Instituting Investigation on the Commission's Own
Motion into the Operations and Practices of Pacific Gas
and Electric Company regarding Anti-Smart Meter
Consumer Groups

Investigation 12-04-010
(Filed April 19, 2012)

**JOINT MOTION OF CONSUMER PROTECTION AND SAFETY DIVISION, PACIFIC
GAS AND ELECTRIC COMPANY AND THE UTILITY REFORM NETWORK
FOR APPROVAL OF SETTLEMENT AGREEMENT**

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November 26, 2012

**BEFORE THE PUBLIC UTILITIES COMMISSION
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FOR APPROVAL OF SETTLEMENT AGREEMENT**

The Consumer Protection and Safety Division of the California Public Utilities Commission of the State of California (“CPSD”), Pacific Gas and Electric Company (“PG&E”), and The Utility Reform Network (“TURN”) (collectively referred to herein as the “Settling Parties”) jointly move the Commission to approve the Settlement Agreement filed herewith (the “Settlement”) resolving all disputed issues among the Settling Parties in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY OF SETTLEMENT

The Settlement reflects the shared belief among CPSD, PG&E and TURN that it is a fair resolution of all issues in this Order Instituting Investigation (“OII”), and that their resources are better devoted to matters other than litigating this case. If approved by the Commission, the Settlement will resolve the OII as to the Settling Parties. Additional parties: The EMF Safety Network, Joshua Hart and CALifornians for Renewable Energy (“CARE”) have not joined the Settlement as of the date of this filing.

This OII arose out of news media reports from on or about November 9, 2010 that William Devereaux, then Senior Director of PG&E's SmartMeter™ Program, used a false name to join some online anti-smart meter groups. CPSD alleged that PG&E senior management knew of Mr. Devereaux's deceit before it was reported in the press and failed to prevent and stop his inappropriate behavior. PG&E acknowledges that Mr. Devereaux was a Senior Director at PG&E from March 16, 2009 to November 10, 2010. PG&E further acknowledges his conduct was misleading, and that those actions were wrong and in violation of PG&E's internal Code of Conduct and Core Values. Except as so acknowledged, however, PG&E disputes the allegations in the CPSD Investigative Report and maintains that none of its officers or senior management (other than Mr. Devereaux) were aware of or condoned Mr. Devereaux's misconduct.

In the proposed Settlement, PG&E agrees to make a settlement payment to the State of California's General Fund in the amount of \$390,000. PG&E has undertaken a variety of steps to stop conduct similar to Mr. Devereaux's as further described in the settlement agreement, and by this settlement agrees to continue those actions and report to the Commission about its continuing compliance with those steps. PG&E further agrees to sponsor trainings, symposiums or similar events on relevant issues of social media use and proper online protocols, as described in the Settlement and to report to the Commission about its compliance therewith.

As shown in more detail below, the proposed Settlement is reasonable in light of the record, consistent with the law and in the public interest. The Settling Parties request that the Commission approve the Settlement without modification and close the OII.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On or about November 9, 2010 several news media sources reported that William Devereaux, then Senior Director of PG&E's SmartMeter™ Program, used a false name to join some online anti-smart meter groups. On November 9, 2010, PG&E launched an internal investigation in response to these reports and placed Mr. Devereaux on suspension. Mr. Devereaux resigned from PG&E on November 10, 2010, and received no severance upon his departure.

A. Summary of CPSD’s Allegations Regarding Mr. Devereaux’s Conduct

CPSD conducted its own investigation into Mr. Devereaux’s activities and, on February 3, 2012, CPSD submitted an Investigative Report alleging that:

- (1) PG&E violated PU Code Section 451 by failing to furnish just and reasonable service when Mr. Devereaux lied about his identity to infiltrate online smart meter discussion groups in order to spy on their activities and discredit their views; and,
- (2) PG&E senior management knew of Mr. Devereaux’s deceit before it was reported in the press and failed to prevent and stop his inappropriate behavior.

B. Summary of PG&E’s Contentions in Response to CPSD

PG&E acknowledges that Mr. Devereaux was a Senior Director at PG&E from March 16, 2009 to November 10, 2010. PG&E further acknowledges his conduct was misleading, and that those actions were wrong and in violation of PG&E’s internal Code of Conduct and Core Values. Except as so acknowledged, PG&E disputes the allegations in the CPSD Investigative Report and maintains that none of its officers or senior management (other than Mr. Devereaux) were aware of or condoned Mr. Devereaux’s misconduct.

PG&E further maintains that PG&E did not violate Public Utilities Code §§ 451, 2109, or any other statute, rule or regulation. Indeed, PG&E contends that Section 451 does not purport to regulate the type of conduct alleged in the CPSD Report.

C. Relevant Procedural History

On April 25, 2012, the Commission issued the instant OII. The proceeding described in the OII encompassed the following issues:

- (1) whether PG&E violated any provisions of the PU Code, general orders other rules or requirements as a result of the improper activities of Mr. Devereaux or any other PG&E representative regarding anti-smart meter consumer groups;
- (2) whether PG&E management was aware of Mr. Devereaux’s activities;
- (3) the extent of Mr. Devereaux’s improper activities regarding anti-smart meter

consumer groups; and,

(4) whether fines and/or other remedial actions should be imposed on PG&E.

The Commission held a prehearing conference on June 25, 2012 during which TURN, The EMF Safety Network, Joshua Hart and CARE were granted party status.

On July 25, 2012, Assigned Commissioner Florio issued the Assigned Commissioner's Ruling and Scoping Memo, which revised the scope of the OII to encompass examination and determination of the following issues:

- (1) whether PG&E should be found to have violated §§ 451 and 2109 as a result of the improper activities of Mr. Devereaux, or any other PG&E employee or representative, regarding anti-smart meter consumer groups;
- (2) whether PG&E management was aware of Devereaux's activities, or the activities of any other employee or representative, and if so, whether it took appropriate action once it became aware of those activities;
- (3) the extent of Devereaux's improper activities regarding anti-smart meter consumer groups, and the extent of such activities by any other PG&E employee or representative; and,
- (4) whether fines and/or other remedial actions should be imposed on PG&E, and if so, how many fines should be calculated and/or how other remedies should be determined.

On August 30, 2012, a settlement conference was held pursuant to The Commission's Rules of Practice and Procedure, Rule 12(b). A copy of the Notice of Settlement Conference was served on all parties and filed with the Commission on August 15, 2012. All parties were present at that meeting. Several additional meeting were held between various parties and some documents were exchanged between some of the parties. At the start of the initial conference, all participants agreed that all discussions during the initial settlement conference and all subsequent discussions were confidential. As a result of that agreement, the Settling Parties cannot publicly share more information about those discussions, including a more complete listing of the several meetings, who participated in those meeting or what documents were exchanged.

III. THE COMMISSION SHOULD APPROVE THE SETTLEMENT

The Settlement is consistent with the Commission's policy that provides for settlements between the Commission's enforcement staff and a utility where staff has alleged a violation of the Commission's rules or orders. The Commission strongly favors settlement and "takes into consideration a long-standing policy favoring settlements. This policy reduces litigation expenses, conserves scarce Commission resources and allows parties to craft their own solutions reducing the risk of unacceptable outcomes if litigated." *Application of California-American Water Company*, D.10-06-038, 2010 Cal. PUC LEXIS 224 at *46. Commission Rule 12.1(d) sets forth the standard for approval of settlements:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

As described herein, the proposed Settlement meets each of the requirements of Rule 12.1(d).

A. The Settlement Is Reasonable In Light of the Record

The Commission has before it a sufficient evidentiary record on which to conclude that the Settlement is reasonable. CPSD's Investigative Report and all supporting materials are in the record in this proceeding. In addition, PG&E has produced and continues to produce documents in response to requests by the parties to this proceeding. Arguably the most relevant of those documents are included as attachments to the Investigative Report and are thus also in the record.

This case give rises to reasonable and opposing interpretations of both fact and law. While a trier of fact might conclude that the alleged violations occurred, it might also conclude that the facts reflect the actions of a rogue employee acting alone and in violation of PG&E's own Code of Conduct, but not in violation of any law, rule or regulation. While each of the Settling Parties believes they would prevail if they were to litigate this matter, the Settling Parties

recognize the risks inherent in litigation and, accordingly, have chosen to resolve this matter on reasonable terms that all of the Settling Parties can support. Those terms include payment of a civil penalty of \$390,000 and PG&E's commitment to sponsor trainings, symposiums or similar events on relevant issues of social media use and proper online protocols, as detailed in the Settlement.

The Settlement also requires PG&E to continue to strengthen the measures it undertook after Mr. Devereaux's departure (described below), including incorporating the new Social Media Standard messages into its new Code of Conduct documents in 2012, and adding a new video vignette addressing social media use into its 2013 Ethics and Compliance Training. PG&E also will submit letters of compliance to the CPSD (with a copy to the service list of this proceeding) confirming that PG&E has accomplished the items described above. The first compliance letter is due to be filed by the end of 2013 and the second compliance letter is due to be filed by the end of 2015.

Moreover, PG&E already has undertaken numerous voluntary measures to ensure that its online and social media policies are robust, cogent and well-communicated to employees. For example:

- PG&E engaged its internal communications department to revisit and revise its Social Media Standard to ensure that all employees know what PG&E expects of them with regard to their use of social media.
- PG&E developed a significant FAQ Sheet to supplement the new Social Media Standard and to help clarify the key messages.
- To more directly communicate these policies to every employee within the company, PG&E will be incorporating the new Social Media Standard messages directly into its new Code of Conduct documents, as well as adding a new video vignette addressing social media use into its 2013 Ethics and Compliance Training. Certification of compliance with the Code of Conduct and participation in the Ethics and Compliance Training are mandatory for every PG&E employee.

- Earlier this year, PG&E's Chairman and CEO, Tony Earley, created the Chairman's Ethics Council to provide a new forum to discuss ethical behavior throughout the company as PG&E works to rebuild trust with our customers and communities. The Council is comprised of a cross-functional group of employees (bargaining and non-bargaining unit) and leadership who work together to explore business ethics and conduct at PG&E.

The \$390,000 penalty agreed to by the Settling Parties is reasonable in light of the record.

While it is true that PG&E is a large company with significant financial resources, given the facts of the case, the proposed penalty constitutes a significant fine that will serve as an effective general deterrent. This is particularly true in light of PG&E's view that there is a lack of any evidence that PG&E's management had actual knowledge of Mr. Devereaux's actions. PG&E's agreement to conduct sponsorship of trainings, symposiums or similar events to national organizations on relevant issues of social media use and proper online protocols is similarly reasonable given the nature of the alleged violations, which involve improper use of a false name by a PG&E employee participating in online anti-smart meter discussion groups.

B. The Settlement Is Consistent With Law

The Settlement requires the payment of a civil penalty of \$390,000, application of existing and enhanced PG&E internal policies, and PG&E's commitment to sponsor trainings, symposiums or similar events on relevant issues of social media use and proper online protocols to national organizations. The civil penalty is clearly consistent with law since it is within the range of civil penalties the Commission would be authorized to assess under Public Utilities Code § 2107 were this case litigated and PG&E found liable. Similarly, PG&E's existing and forthcoming internal policies and corrective actions are aligned with the letter and spirit of all applicable laws and regulations. Finally, PG&E's agreement regarding trainings, symposiums or similar events on relevant issues of social media use and proper online protocols

likewise is consistent with law since it does not contravene or compromise any known statutory provision or controlling law.

C. The Settlement Is In the Public Interest

As noted above, the Commission has a “long-standing policy favoring settlements.” *Application of California-American Water Company*, D.10-06-038, 2010 Cal. PUC LEXIS 224 at *46. As the Commission has reiterated over the years, the “Commission favors settlements because they generally support worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.” *Application of Southern California Edison Company*, D.10-12-035, 2010 Cal. PUC LEXIS 467 at *87; *see also Order Instituting Rulemaking on the Commission’s Own Motion to address the issue of customers electric and natural gas service disconnection*, D.10-12-051, 2010 Cal. PUC LEXIS 556 at *55 (Commission decisions “express the strong public policy favoring settlement of disputes if they are fair and reasonable”); *Application of Golden State Water Co.*, D.10-11-035, 2010 Cal. PUC LEXIS 495 at *17 (the Commission’s “longstanding policy favoring settlements . . . reduces litigation expenses, conserves scarce Commission resources . . .”); *Application of Pacific Gas and Electric Co.*, D.10-11-011, 2010 Cal. PUC LEXIS 533 at *50 (“There is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation”).

This Settlement is consistent with the Commission’s policy. In the Settlement, PG&E agrees to pay a significant penalty as a consequence of the alleged violations. CPSD, PG&E and TURN each recognize that, if they were to fully litigate the OII, the result might be different from that provided by the Settlement. But each believes the result achieved by the Settlement is just and reasonable under the circumstances and that the possibility of a more favorable litigated

outcome does not outweigh the expenditure of time, resources, and risk of a negative outcome inherent in the litigation process.

The benefits of resolving this case without litigation are similar to those recognized in prior Commission decisions. As the Commission has observed:

“CPSD and [Respondent] are surely correct when they state in their motion for adoption:

Should the proceeding continue to a full evidentiary hearing on the merits, both parties would need to invest considerable additional time and resources, and the issues raised in [the OII] would not likely be resolved at the Commission level for many more months. In addition, it is possible that one or more of the [p]arties will be dissatisfied with the decision after hearings, and the possibility exists that the litigation would continue on application for rehearing and/or petition for judicial review.

Since one of the main reasons behind the policy favoring settlements is to avoid the expense and uncertainty of litigation, we agree with [Respondent] and CPSD that this settlement is in the public interest.”¹

The proposed Settlement, by preserving scarce time and resources and ensuring a just outcome supported by all of the Settling Parties, is similarly in the public interest and should be approved without modification.

IV. CONCLUSION

The Settling Parties agree that the Settlement represents a fair resolution of all issues raised by this enforcement action. The Settlement is the culmination of substantial work by the Settling Parties and is based on a more than sufficient evidentiary record. The Settlement is reasonable in light of the record, consistent with the law, and in the public interest. The Commission should approve the Settlement without modification and close the OII.

¹ D.06-10-027 (Oct. 19, 2006) at p. 31 (citation omitted).

Respectfully submitted,

November 26, 2012

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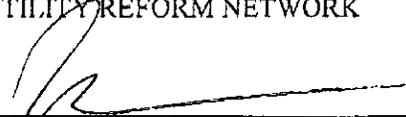
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