



**FILED**

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

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

Investigation 12-01-007  
(Filed January 12, 2012)

(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.

Investigation 11-02-016  
(Filed February 24, 2011)

(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with High Population Density.

Investigation 11-11-009  
(Filed November 10, 2011)

(Not Consolidated)

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.

Rulemaking 11-02-019  
(Filed February 24, 2011)

(Not Consolidated)

**ADMINISTRATIVE LAW JUDGES' RULING GRANTING MOTION OF THE  
DIVISION OF RATEPAYER ADVOCATES FOR CLARIFICATION OF  
EX PARTE REPORTING REQUIREMENTS**

On May 14, 2013, the Division of Ratepayer Advocates (DRA) filed a motion requesting clarification of the Commission's *ex parte* rules with regard to communications between financial industry representatives and Commissioners' offices. This ruling grants DRA's motion and provides the requested clarification.

Article 8 of the Commission's Rules of Practice and Procedure (Rules) govern communications with decision makers and advisors. As defined in Rule 8.1(c), an *ex parte* communication is:

a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

- (1) concerns any substantive issue in a formal proceeding,
- (2) takes place between an interested person and a decisionmaker, and
- (3) does not occur in a public hearing, workshop, or other public forum noticed by ruling or order in the proceeding, or on the record of the proceeding.

Investigation (I.) 12-01-007, I.11-02-016 and I.11-11-009 (collectively, the Pipeline Investigations) are adjudicatory proceedings. Under Rule 8.3 of the Commission's Rules of Practice and Procedure (Rules), *ex parte* communications are prohibited in adjudicatory proceedings.

Rulemaking (R.) 11-02-019 is categorized as ratesetting. In ratesetting proceedings, when *ex parte* communications are permitted, they must be noticed pursuant to Rule 8.4.<sup>1</sup> Further, when a decision maker grants a meeting with an interested party, other parties are entitled to equal time pursuant to Rule 8.3(c)(2).

DRA is correct that the *ex parte* rules are not limited to parties participating formally in Commission proceedings. Persons and entities who are not formally participating as parties but who have a financial interest in the proceeding, or who represent such interests, are “interested persons” subject to the *ex parte* rules.<sup>2</sup> Interested persons may include representatives of ratings agencies, industry analysts or financial institutions (financial industry representatives) that have financial interests in Pacific Gas and Electric Company or PG&E Corporation. As relevant here, financial industry representatives from Bank of America/Merrill Lynch, Deutsche Bank Securities, and Morgan Stanley and JP Morgan discussed the Pipeline Investigations with Commissioners and their advisors.

The amount of the penalties the Commission may impose in the Pipeline Investigations is a substantive issue. Therefore, an improper *ex parte* communication would have occurred between decision makers and financial industry representatives if the size of the fine or other penalties the Commission may impose in these proceedings were discussed.

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<sup>1</sup> See Rule 8.3(c).

<sup>2</sup> Rule 8.1(d).

Improper *ex parte* communications jeopardize the integrity of proceedings. Due process requires, at a minimum, that any prior *ex parte* communications be disclosed. Additionally, interested persons, or their representatives in these proceedings, shall comply with the *ex parte* rules on a going forward basis.

Therefore **IT IS RULED** that:

1. The Motion of the Division of Ratepayer Advocates for Clarification of the *Ex Parte* Rules is granted.

2. Interested persons, or their representatives in these proceedings, shall comply with the *ex parte* rules, consistent with the interpretation of those rules set forth herein.

3. Interested persons or their representatives who have engaged in unreported or improper *ex parte* communications in these proceedings shall, within 10 business days file notices of prior *ex parte* communications containing the information required by Rule 8.4 of the Commission's Rules of Practice and Procedure and serve the notices on the service lists in these proceedings.

a. Interested persons or their representatives who report *ex parte* communications in compliance with this Paragraph will not be subject to sanctions for the noticed violations.

b. Interested persons or their representatives who fail to comply with this Paragraph may be subject to fines pursuant to Pub. Util. Code § 2111.

4. Where prior *ex parte* communications in a ratesetting proceeding are noticed pursuant to Paragraph 3, equal time shall be granted to intervenors consistent with Rule 8.3(c)(2) of the Commission's Rules of Practice and Procedure.

5. Representatives of ratings agencies, industry analysts or financial institutions (financial industry representatives) that have financial interests in Pacific Gas and Electric Company or PG&E Corporation are “interested persons” as defined by Rule 8.1(d) of the Commission’s Rules of Practice and Procedure and shall comply with the *ex parte* rules.

6. This ruling shall be served on the financial industry representatives listed below:

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Dated May 16, 2013 at San Francisco, California.

/s/ AMY YIP-KIKUGAWA

Amy C. Yip-Kikugawa  
Administrative Law Judge

/s/ MARK S. WETZELL

Mark S. Wetzell  
Administrative Law Judge

/s/ MARIBETH A. BUSHEY

Maribeth A. Bushey  
Administrative Law Judge