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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 Higher Population Density.

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

(Not Consolidated)

ADMINISTRATIVE LAW JUDGES' RULING GRANTING MOTION FOR ONE DAY NOTICE OF ALL COMMUNICATIONS WITH COMMISSIONER OFFICES AND COMMISSION ADVISORY STAFF

SUMMARY

This Administrative Law Judges' (ALJs) ruling grants the joint motion of the City of San Bruno (San Bruno), the City and County of San Francisco (CCSF), the Division of Ratepayer Advocates¹ (DRA), and The Utility Reform Network (TURN) (together "Joint Parties") for an expanded *ex parte* notice requirement for any interested person communications with Commissioner Offices and Commission advisory staff.

Background

On July 28, 2014, San Bruno filed two motions in these proceedings, one seeking the recusal of President Peevey, and the other requesting that the Commission impose sanctions against Pacific Gas and Electric Company (PG&E) under Rule 1.1 of the Commission's Rules of Practice and Procedures (Rules) for violations of the Commission's rules prohibiting *ex parte* communications in adjudicatory cases. Those motions were supported by copies of e-mails from PG&E to President Peevey's office, and responses to those e-mails from the President's office. San Bruno's motion to recuse President Peevey was denied; its motion for sanctions for Rule 1.1 violations is pending.

On Monday, September 15, 2014, PG&E issued a "Notice of Improper *Ex Parte* Communications" in its Gas Transmission and Storage rate case, Application 13-12-012, revealing its efforts to manipulate the assignment of the ALJ to that proceeding, through direct communications with both President Peevey's and Commissioner Florio's office in violation of Article 8 of the

¹ The Division of Ratepayer Advocates (DRA) was renamed the Office of Ratepayer Advocates (ORA) effective September 26, 2013, pursuant to Senate Bill 96. However, for consistency and to avoid confusion, this Ruling continues to refer to ORA by its former name, DRA.

Commission's Rules of Practice and Procedure relating to communications with decision makers and their advisors (*Ex Parte* Rules).

On September 19, 2014, Joint Parties filed a motion for implementation of an expanded *ex parte* notice requirement for any interested person communications with Commissioner Offices and Commission advisory staff (Motion). Joint Parties believe that the revelations of the last two months, show a pattern and practice of attempts by PG&E to manipulate Commission proceedings where its interests are at stake and are concerned that PG&E has engaged in other attempts to manipulate these penalty investigations. Accordingly, the Joint Parties request a ruling to enforce the existing prohibition on all substantive *ex parte* communications and that the Commission exercise its authority under Rule 1.2 to expand (prospectively) the *Ex Parte* Rules for purposes of these investigations as follows: (1) to require any interested person to report all communications (*i.e.*, including communications that the interested person deems to be procedural) between interested persons and decision makers and/or their advisors within one business day; and (2) for reporting purposes, to expand the definition of "advisors" to include the Executive Director, General Counsel, Division Directors, and any other Commission staff who act in an advisory capacity in these proceedings.

In an electronic ruling issued on September 19, 2014, the ALJs shortened the time to respond to this motion to September 23, 2014. PG&E filed a timely response. PG&E states that while it did not oppose the Motion, it disagreed with Joint Parties' characterizations. Further, PG&E believes that the phrase "any other Commission staff who act in an advisory capacity in these proceedings" is vague and requests that these individuals be identified.

Discussion

We agree with Joint Parties that recent events highlight the need for additional safeguards to ensure the integrity of these proceedings. Further, PG&E does not oppose the Motion. Accordingly, good cause exists to grant Joint Parties' Motion and adopt the procedures proposed therein.

We remind all interested persons that the existing prohibition on *ex parte* communications on substantive issues remains in place and will be vigorously enforced. Pursuant to our ruling on May 16, 2013, "interested persons" includes not only parties, but also 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.²

We do not agree with PG&E that there is a need to identify individually all Commission staff, who act in an advisory capacity in these proceedings. PG&E and all parties should err on the side of more, rather than less disclosure. Therefore, they should presume that any Commission employee that they contact regarding a substantive or procedural issue may act in an advisory capacity to a decision maker in these proceedings, unless that Commission employee has actively taken an advocacy position (*e.g.*, DRA attorneys).

Finally, we shall provide an e-mail copy of this ruling to all Commission staff. In this way, Commission staff are aware of the requirements imposed on interested persons in these proceedings. Further, Commission staff who act in an

² *Administrative Law Judges' Ruling Granting Motion of the Division of Ratepayer Advocates for Clarification of Ex Parte Reporting Requirements*, filed May 16, 2013.

advisory capacity in these proceedings shall remind interested persons of their reporting obligations.

IT IS RULED that:

1. *Joint Parties' Motion For One Day Notice Of All Communications With Commissioner Offices And Commission Advisory Staff* is granted in its entirety.
2. All interested persons are reminded that the existing prohibition on substantive ex parte communications remains in place and will be vigorously enforced.
3. The Commission's *Ex Parte* Rules set forth at Article 8 of the Commission's Rules of Practice and Procedure are expanded so that:
 - a. All written or oral communications by interested persons with decision makers or their advisors regarding these proceedings shall be reported consistent with the requirements of Rule 8.4, even if the communication could be characterized as "procedural" or otherwise "non-substantive."
 - b. The Rule 8.4 reporting requirements (but not the existing ban on substantive communications) shall extend to any Commission staff acting in an advisory capacity in these investigations, including but not limited to the General Counsel, the Executive Director, Deputy Executive Directors, and Division Directors.
 - c. Interested persons engaging in any such communications shall report the communications within one working day of the communication, not the three working days Rule 8.4 provides.
 - d. Brief summaries that do not accurately convey the full substance of what was discussed during the communication will not be considered compliant with the *Ex Parte* Rules and may subject the reporting party to sanctions under Rule 1.1. Consequently, reporting of communications shall be as forthcoming as reasonably

possible, and should err on the side of more, rather than less, disclosure.

4. The reporting requirement adopted herein shall be retroactive to September 19, 2014, the day the Joint Parties' Motion was filed, except that communications occurring on or before the date of this Ruling shall be filed no later than September 30, 2014.

5. An e-mail copy of this ruling shall be sent to all Commission staff. Any Commission staff acting in an advisory capacity in these proceedings who is contacted by an interested person on a substantive or procedural issue shall remind the interested person of its reporting obligations under Ruling Paragraph 3.

Dated September 24, 2014, at San Francisco, California.

 /s/ MARYAM EBKE for
Amy C. Yip-Kikugawa
Administrative Law Judge

 /s/ MARYAM EBKE for
Mark S. Wetzell
Administrative Law Judge