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

Application of Pacific Gas and Electric
Company Proposing Cost of Service and Rates
for Gas Transmission and Storage Services for
the Period 2015-2017.

(U 39 G)

Application 13-12-012
(Filed December 19, 2013)

And Related Matter.

Investigation 14-06-016

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE
TO ORDER TO SHOW CAUSE**

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I. INTRODUCTION.

“No excuses.” Those words, issued in a letter to the company’s 20,000 employees from PG&E Corporation’s Chairman, Chief Executive Officer, and President (“PG&E’s CEO”) and Pacific Gas and Electric Company’s (“PG&E’s”) President, described PG&E’s reaction to its discovery of improper *ex parte* communications between PG&E and the Commission. PG&E reaffirms in this filing that there are no excuses for what happened. PG&E acknowledges that it violated the Commission’s *ex parte* rules through communications with Commission decision-makers regarding the Administrative Law Judge (“ALJ”) assignments for this proceeding. PG&E’s actions were unacceptable. It has responded swiftly and is working to ensure that such conduct does not happen again. But PG&E also understands that its response cannot undo what has happened and it is ready to accept the consequences.

II. STATEMENT OF RELEVANT FACTS.

A. PG&E’s Discovery of the Reported Violations.

In July, 2014, the City of San Bruno filed a motion alleging that 41 e-mails from PG&E to the Commission violated the Commission’s rules regarding *ex parte* communications. PG&E’s response to the motion acknowledged that some of the e-mails lacked the

professionalism PG&E would expect, but explained that none of the communications in any way violated the Commission's *ex parte* rules.

PG&E's evaluation of the 41 e-mails was not the end of the matter. On its own initiative, PG&E broadened its internal review of potential *ex parte* violations well beyond the communications referenced in San Bruno's motion. As part of an ongoing review, PG&E has reviewed more than 65,000 communications with the Commission since early 2010. PG&E's review has led to its discovery of multiple improper *ex parte* communications from its former Vice President of Regulatory Relations to Commission decision-makers involving the potential assignment or reassignment of particular ALJs to this proceeding.

B. PG&E's Response to Discovery of the Violation.

PG&E acted immediately to address what it recognized as a clear violation of Commission rules. First, three high-ranking employees will no longer be employed at PG&E. These former employees were the Senior Vice President of Regulatory Affairs, the Vice President of Regulatory Relations, and the Vice President of Regulatory Proceedings and Rates. Second, PG&E named Steven Malnight, an officer from outside the Regulatory Relations group, to assume the role of Senior Vice President of Regulatory Affairs. Mr. Malnight will report directly to PG&E's President, Christopher Johns. Third, PG&E decided to create the new role of chief regulatory compliance officer, whose mandate will be to help oversee compliance with all requirements governing PG&E's interactions with the CPUC. The position will report to PG&E's CEO, Anthony Earley, and the Audit Committee of PG&E Corporation's Board of Directors. Fourth, PG&E engaged Ken Salazar, a partner in the WilmerHale law firm, as special counsel on regulatory compliance matters to assist in developing a best-in-class regulatory compliance model. Mr. Salazar, who was hired directly by PG&E's CEO, has deep experience in regulatory and energy matters. He is a former Secretary of the U.S. Department of the Interior, a former U.S. Senator from Colorado, the former Attorney General of Colorado, and the Executive Director of the Colorado Department of Natural Resources. Fifth, PG&E is in the

process of implementing additional, mandatory training for all employees who routinely interact with PG&E's regulators.

C. PG&E's Self-Report of Violations of Commission Rule 8.3(f).

In addition to taking the steps outlined above, PG&E promptly filed a Notice of Improper *Ex Parte* Communications that disclosed the improper written communications between its then-Vice President of Regulatory Relations and certain Commission employees. The filing attached copies of the written communications and also disclosed that PG&E believes additional oral *ex parte* communications regarding the potential ALJ assignment also occurred during the same period. PG&E is continuing its internal review of communications involving the CPUC.¹

D. The Order to Show Cause.

In response to PG&E's self-report, the Commission issued an Order to Show Cause ("OSC") on September 17, 2014. The OSC identifies three statements from PG&E's former Vice President of Regulatory Relations regarding ALJs that might be assigned to this proceeding. The OSC required PG&E to show cause as to why the comments did not violate Rule 1.1's requirement that "any person who transacts business with the Commission agrees to maintain the respect due to the Commission's Administrative Law Judges." OSC, at 2. In addition, the OSC acknowledged the e-mails attached to the self-report and noted that those communications were "pressing for the assignment of this proceeding to Judge John S. Wong." *Id.* The OSC then cites to Rule 8.3(f), which provides that "[e]x parte communications regarding the assignment of a proceeding to a particular Administrative Law Judge, or reassignment of a proceeding to another Administrative Law Judge, are prohibited." *Id.* As a result, the OSC required PG&E to:

show cause why it should not be held in contempt of the Commission and sanctioned for violating Rules 1.1 and 8.3(f). (*See* Pub. Util. Code § 2113.) Such sanctions may include monetary penalties, restrictions on future *ex parte* communications, and other appropriate sanctions as may be identified at the hearing. Any such showing should take into consideration PG&E's past violations of the *ex parte* rules as determined by Decision 08-01-021.

¹ As PG&E advised the Commission in its Notice of Improper *Ex Parte* Communications, PG&E will provide notice in the event additional *ex parte* communications are identified.

Id. at 2-3. PG&E respectfully submits its response to the Order to Show Cause.

III. RESPONSE TO ORDER TO SHOW CAUSE.

A. PG&E Admits the Violations Identified in the OSC.

The OSC requires PG&E to show cause as to why it should not be found in contempt or sanctioned for violating Commission Rule 1.1 through the three disparaging comments made about potential ALJs and for violating Commission Rule 8.3(f) for engaging in *ex parte* communications regarding the assignment or reassignment of particular ALJs for this proceeding. PG&E admits that these communications were a violation of Commission Rules. It does not contest any finding that PG&E violated Rule 1.1 and 8.3(f).

B. PG&E Will Accept a Penalty.

California Public Utilities Code Section 2107 provides that any public utility that fails “to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense” (i.e., for each improper *ex parte* communication or disparaging comment regarding a potential ALJ). Cal. Pub. Util. Code § 2107. The maximum fine for contempt of the Commission pursuant to Section 2113 is \$1,000 per incident.

PG&E recognizes that the Commission will impose a penalty for these violations. It requests that in doing so, the Commission take into account how the violations were identified, disclosed and addressed. As the Commission has explained, “[a] penalty must take into account the scope of a utility’s investigatory efforts, level of self-reporting and cooperation, and corrective measures, to avoid the unintended consequence of discouraging such behavior in the future, for the utility being penalized as well as other utilities. We expect and demand cooperation and will reward it appropriately.” *Investigation on the Comm’n’s Own Motion into the Practices of the S. Cal. Edison Co. to Determine the Violations of the Laws, Rules, and Regulations Governing Performance Based Ratemaking, its Monitoring and Reporting to the*

Comm'n, Refunds to Customers and Other Relief, and Future Performance Based Ratemaking for this Util., D. 08-09-038, 2008 Cal. PUC LEXIS 401, at *156-58 (Cal. PUC 2008). See also *Util. Consumers' Action Network v. SBC Commc'ns, Inc.*, D. 08-08-017, 2008 Cal. PUC LEXIS 302, at *41-42 (Cal. PUC 2008) (noting that in determining the size of a penalty levied under California Public Utilities Code Section 2107, the Commission should consider “the utility’s conduct in . . . detecting the violation, and disclosing and rectifying the violation”); *Order Instituting Investigation on the Comm’n’s Own Motion into the Operations, Practices, and Conduct of Telseven, LLC, Calling 10 LLC dba Cal. Calling 10, (U7015C), and Patrick Hines, an Individual, to Determine Whether Telseven, Calling 10, and Patrick Hines have Violated the Laws, Rules and Regulations of this State in the Provision of Directory Assistance Servs. to Cal. Consumers*, D. 14-08-033, 2014 Cal. PUC LEXIS 368, at *27 (Cal. PUC 2014) (same).

First, PG&E discovered the violations at issue through a proactive, voluntary search of years of communications with the Commission. It was not required to undertake this search; it decided to do so voluntarily.

Second, PG&E disclosed the violations promptly. It recognized that any delay doing so would be unacceptable to the Commission and other stakeholders. Its disclosure was clear and unqualified. It did not wait until its review was completed and it disclosed as much.

Third, it took immediate steps to address the violation. Three officers will no longer be employed by the Company, including both the officer responsible for every one of the communications and his supervisor. This action alone sent a clear message to employees, all of whom received a letter from PG&E’s CEO and PG&E’s President reinforcing the message that such improper conduct will not be tolerated.

Fourth, PG&E is implementing procedures to ensure future compliance with all Commission rules governing interactions with the CPUC. Those procedures include establishing a new position of chief regulatory compliance officer, which reports to PG&E’s CEO and the Board’s Audit Committee and whose mandate will be to help oversee compliance with all requirements governing PG&E’s interactions with the CPUC. PG&E also engaged Ken Salazar

