

Decision **PROPOSED DECISION OF ALJ YIP-KIKUGAWA**

(Mailed 12/7/2015)

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's Natural Gas Transmission Pipeline System in Locations with Higher Population Density.

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

DECISION CLOSING PROCEEDING**Summary**

This decision addresses various outstanding motions in this proceeding. First, this decision addresses two motions filed by the City of San Bruno (San Bruno) regarding alleged ex parte violations by Pacific Gas and Electric Company (PG&E). For the reasons discussed herein, these two motions have now been moved for consideration in a new order instituting investigation - Investigation 15-11-015. Further, this decision denies a motion filed by San Bruno for the Commission to issue an order to show cause against PG&E in connection with its payment of Citation 13-005 (which was subsequently withdrawn). Finally, this decision grants two motions filed by PG&E to file confidential material contained in notices of ex parte communication under seal. With these outstanding motions addressed, no other issues remain and Investigation 11-11-009 is closed.

1. Background

This Order Instituting Investigation (OII) was initiated on November 10, 2011 in response to the September 9, 2010 fire and explosion in San Bruno, California. The Commission opened this OII to review whether any of Pacific Gas and Electric Company's (PG&E) operations and practices of its natural gas transmission pipeline system in locations with higher population density were in violation of state or federal statutes and regulations or Commission rules, general orders or decisions.

On April 9, 2015, the Commission issued Decision (D.) 15-04-022 which resolved the alleged violations in this proceeding. Additionally, a coordinated decision (D.15-04-024) concerning fines and remedies was issued in this proceeding, as well as in Investigation (I.) 11-02-016 and I.12-01-007.¹ These two decisions resolved all issues identified in the Order Instituting Investigation. However, the proceeding remained open to address the following motions filed by the City of San Bruno:

1. *Motion of the City of San Bruno For An Order To Show Cause Why Pacific Gas And Electric Company Should Not Be Held In Violation of Commission Rule of Practice And Procedure 8.3(b) (Rule Against Ex Parte Communications) and for Sanctions and Fees (July Motion), filed on July 28, 2014.*²
2. *Motion for Evidentiary Hearing on City of San Bruno's Motion for an Order to Show Cause as to Why Pacific Gas and Electric Company Should Not Be Held in Violation of Commission*

¹ The Commission also issued these two investigations relating to the San Bruno explosion. I.11-02-016 is the Commission's investigation into whether PG&E violated any provision or provisions of the Public Utilities Code, Commission general orders or decisions, or other applicable rules or requirements pertaining to safety recordkeeping for its gas service and facilities. I.12-01-007 is the Commission's investigation into whether PG&E violated any state or federal statutes or Commission orders in connection with the San Bruno explosion. Together, the three OIIs are referred to as the "Pipeline OIIs."

² D.15-04-024 at 172-173.

*Rule of Practice and Procedure 8.3(b) and for Sanctions and Fees (November Motion), filed on November 10, 2014.*³

3. *Motion of the City of San Bruno for an Order to Show Cause Why Pacific Gas and Electric Company Should not be Held in Violation of the Commission Rules of Practice and Procedure 1.1 and 12.1 or in the Alternative, in Contempt of Commission, and for Sanctions and Fees as Appropriate (January Motion), filed on January 17, 2014.*⁴

2. The July Motion and the November Motion

In the *July Motion* and the *November Motion*, San Bruno alleges that there were improper *ex parte* violations between PG&E and former Commission President Peevey and members of his staff. At the time the Commission issued D.15-04-024, it contemplated issuing “a new order instituting investigation to look into the specific allegations raised by the *July Motion* and the *November Motion*, and at that time, remove them from further consideration in these proceedings.”⁵

On November 23, 2015, the Commission issued *Order Instituting Investigation and Ordering Pacific Gas and Electric Company to Appear and Show Cause Why It Should Not Be Sanctioned for Violations of Article 8 of the Rules of Practice and Procedure Concerning Communications with Decisionmakers and Advisors*

³ D.15-04-024 at 172-173.

⁴ D.15-04-022 at 44.

⁵ D.15-04-024 at 173.

(Investigation 15-11-015). This investigation will include, among other things, consideration of these two motions filed by the City of San Bruno. Consequently, these two motions are now removed from further consideration in this proceeding.

3. The *January Motion*

The *January Motion* concerns communication by PG&E in connection with its payment of Citation 13-005. Between February 14 - 17, 2012, the Commission's Consumer Protection and Safety Division (CPSD)⁶ conducted an audit of PG&E's operations, maintenance and emergency plans pursuant to General Order (GO) 112-E. This audit resulted in various findings, including that PG&E did not have a written procedure for continuing surveillance, as required by Title 49 of the Code of Federal Regulations (C.F.R.) § 192.605(e) and § 192.613. PG&E was notified of this violation on August 29, 2012 and responded on October 12, 2012 that it would have written procedures in place by July 31, 2013. On December 5, 2013 CPSD issued Citation 13-005 against PG&E for having violated GO 112-E by not having a specific written procedure addressing Continuing Surveillance at the time of the February 2012 audit. PG&E was fined \$375,000. PG&E did not appeal the citation, but submitted payment on December 16, 2013 to the Commission's Fiscal Office. Attached to the citation payment was an "addendum" which stated that the issues identified in the citation relating to PG&E's continuing surveillance program pursuant to 49 C.F.R. § 192.613 fell within the scope of this proceeding. The addendum concluded with the statement "Given the substantial overlap between the subject

⁶ On January 1, 2013, CPSD changed its name to the Safety and Enforcement Division (SED). However, for consistency and to avoid confusion, this decision continues to refer to this division as CPSD.

matter of the Citation and the subject matter of the Class Location OII, PG&E respectfully urges the Commission to take into account PG&E's \$375,000 payment submitted today in connection with assessment of any subsequent penalty in the Class Location OII."⁷ On December 20, 2013, CPSD informed PG&E that it was withdrawing Citation 13-005 and returned PG&E's citation payment of \$375,000.

In the *January Motion*, San Bruno asserts that PG&E's addendum was an attempted partial settlement of this proceeding. As such, San Bruno argues that PG&E was required, but failed, to comply with Rule 12.1 of the Commission's Rules of Practice and Procedure regarding proposal of settlements.⁸ Additionally, the *January Motion* contends that the addendum "created a false impression of insignificance" and thus misled the parties and the Commission, in violation of Rule 1.1.⁹ Finally, the *January Motion* states that the addendum may constitute an ex parte communication and thus would violate the ban of ex parte communications in this proceeding.¹⁰

Based on the facts presented in the *January Motion*, we find that San Bruno has not provided sufficient facts to conclude that PG&E violated Rule 12.1 by attempting a partial settlement of this proceeding. San Bruno provides no support that an "addendum" attached to a Citation Payment Form and submitted to the Commission's Fiscal Office would rise to the level of a resolution between PG&E and CPSD of a material issue of fact in this

⁷ *January Motion*, Exhibit C. I.11-11-009 is also referred to as the Class Location OII.

⁸ *January Motion* at 7-9.

⁹ *January Motion* at 7.

¹⁰ Rules of Practice and Procedure, Rule 8.3(b).

proceeding. Since we find PG&E has not attempted a partial settlement, we also find that there was no violation of Rule 1.1.

We further find that San Bruno fails to demonstrate that there was any violation of the Commission's *ex parte* rules. The alleged violation of Rule 8.3(b) appears to be unfounded. Resolution ALJ-274, which delegated citation authority to SED, did not make SED managers or staff "decisionmakers" subject to the *ex parte* rules.¹¹ Moreover, the Citation payment and addendum was not sent to a decisionmaker, as defined in Rule 8.1.¹²

For the reasons discussed above, we deny the *January Motion*.

4. PG&E Motions to File Confidential Material Under Seal

In addition to the two motions filed by the City of San Bruno, PG&E had filed two separate motions seeking to file certain confidential material under seal:

1. *Motion of Pacific Gas and Electric Company for Leave to File Under Seal Confidential Material in Notice of Improper Ex Parte Communication; [Proposed] Ruling, filed May 21, 2015 (concerning a single number that in context appears to reflect the amount of a settlement offer in the Pipeline OIIs)*
2. *Motion of Pacific Gas and Electric Company (U 39 G) for Leave to File Confidential Material in Late-Filed Notice of Communication Under Seal; [Proposed] Ruling, filed June 11, 2015 (concerning employee/contractor and customer information contained in the attachments to a data request response provided to the Safety and Enforcement Division.)*

¹¹ *Pacific Gas and Electric Company's Response to Motion of the City of San Bruno for an Order to Show Cause, Etc. (PG&E Response)*, filed January 30, 2014, at 2-3.

¹² As required by the Citation Payment Form, a copy was sent to the Director of CPSD. Copies of the Citation Payment Form and the addendum were also sent to Executive Director Paul Clanon, Deputy Executive Director Michelle Cooke and Ken Bruno of CPSD.

The protected materials in the confidential, unredacted version of PG&E's Notices are described in the Motions. PG&E's motions were unopposed and are granted. Accordingly, the confidential, unredacted version of this information shall remain under seal, and shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. Conclusion

There are no other issues pending in this proceeding. Accordingly, this proceeding should be closed.

6. Comments on Proposed Decision

The proposed decision of ALJ Amy C. Yip-Kikugawa in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Amy C. Yip-Kikugawa is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On April 9, 2015, the Commission issued Decision (D.) 15-04-022 and D.15-04-024 which resolved all issues in this proceeding except for three motions filed by the City of San Bruno on January 17, 2014, July 28, 2014 and November 10, 2014.

2. The City of San Bruno's July 28, 2014 and November 10, 2014 motions seek sanctions against PG&E for alleged violations of the Commission's *ex parte* rules.

3. Decision 15-04-024 contemplated issuing a new OII to consider the allegations raised in the City of San Bruno's motions.

4. On November 23, 2015, the Commission issued *Order Instituting Investigation and Ordering Pacific Gas and Electric Company to Appear and Show Cause Why It Should Not Be Sanctioned for Violations of Article 8 of the Rules of Practice and Procedure Concerning Communications with Decisionmakers and Advisors* (Investigation 15-11-015).

5. Investigation 15-11-015 includes consideration of the July 28, 2014 and November 10, 2014 motions filed by the City of San Bruno.

6. Resolution ALJ-274, which delegated citation authority to SED, did not make SED managers or staff "decisionmakers" subject to the *ex parte* rules.

7. The Citation payment and addendum was not sent to a decisionmaker, as defined in Rule 8.1.

Conclusions of Law

1. Consideration of two motions filed by the City of San Bruno on July 28, 2014 and November 10, 2014 has been moved to Investigation 15-11-015.

2. An "addendum" attached to a Citation Payment Form and submitted to the Commission's Fiscal Office does not constitute a settlement between PG&E and CPSD of a material issue of fact in this proceeding.

3. The City of San Bruno's *Motion of the City of San Bruno for an Order to Show Cause Why Pacific Gas and Electric Company Should not be Held in Violation of the Commission Rules of Practice and Procedure 1.1 and 12.1 or in the Alternative, in Contempt of Commission, and for Sanctions and Fees as Appropriate (January Motion)*, filed on January 17, 2014, fails to demonstrate violations of Rule 12.1 or Rule 8 of the Commission's Rules of Practice and Procedure and should be denied.

4. PG&E's motions, filed on May 21, 2015 and June 11, 2015, seeking to file certain confidential information under seal should be granted.

5. Investigation 11-11-009 should be closed.

O R D E R

IT IS ORDERED that:

1. The City of San Bruno's *Motion of the City of San Bruno for an Order to Show Cause Why Pacific Gas and Electric Company Should not be Held in Violation of the Commission Rules of Practice and Procedure 1.1 and 12.1 or in the Alternative, in Contempt of Commission, and for Sanctions and Fees as Appropriate (January Motion)*, filed on January 17, 2014 is denied.

2. Pacific Gas and Electric Company's *Motion of Pacific Gas and Electric Company for Leave to File Under Seal Confidential Material in Notice of Improper Ex Parte Communication*, filed on May 21, 2015 and *Motion of Pacific Gas and Electric Company (U 39 G) for Leave to File Confidential Material in Late-Filed Notice of Communication Under Seal*, filed on June 11, 2015, are granted. The confidential, unredacted version of this information shall remain under seal, and shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner,

the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as
Law and Motion Judge

3. Investigation 11-11-009 is closed.

This order is effective today.

Dated _____, at San Francis