



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.

I. 12-04-010
Filed April 19, 2012

RESPONSE OF CALIFORNIANS FOR RENEWABLE ENERGY AND JOSHUA HART TO AMENDED MOTION OF PACIFIC GAS AND ELECTRIC COMPANY FOR PROTECTIVE ORDER

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC or Commission), CALifornians for Renewable Energy (CARE) and Joshua Hart submit this response to Pacific Gas and Electric Company (PG&E)'s Amended Motion of Pacific Gas and Electric Company for Protective Order. The response is timely because it is submitted within the schedule ordered during the Prehearing Conference of June 25, 2012.

CARE and Joshua Hart are asking the Commission to make a statement that spying on a party to a proceeding is contrary to the Commission's Rules of Practice and Procedure. CARE and Joshua Hart are concerned that the redactions include names and e-mail addresses of PG&E employees as well as persons who are not PG&E employees and ask for the identities of those persons to also be provided.

There is a compelling state interest to prevent regulated California utility companies from interfering with their customers' participation in regulating the provision of utility services to California ratepayers. Any stakeholder in the proceedings of the Commission is protected by the Commission¹.

¹ CALIFORNIA CONSTITUTION
ARTICLE 12 PUBLIC UTILITIES

SEC. 6. The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction.

Without individual accountability for those who knew about the spying there is no deterrent assuring the interveners that the subversion of the CPUC proceedings will not happen again. PG&E's amended motion asks for redaction of the identities of PG&E employees as well as those of third parties. CARE and Joshua Hart object to protecting the identities of PG&E employees and other third parties because of the problem of continuing harassment and spying on intervener groups in CPUC proceedings. CARE and Joshua Hart also object to the complete redaction of Attachments 2 and 5 in the CPSD investigation report- no justification is provided by PG&E for these redactions. There is reason to believe that these attachments include key information about Devereaux's intelligence gathering activities, what was known about them, when, and by who. The right of the public to be able to access the full CPSD investigation outweighs the privacy rights of those who were complicit and who carried out these violations. CARE and Joshua Hart argue that releasing the identities of those involved will constitute a significant deterrent to similar activities in the future.

June 25, 2012, PHC Transcript pages 14 (lines 8-28) and page15 (lines 1-5):

Joshua Hart:

Stop Smart Meters and the other organizations who were the victims of PG&E's spying are engaged in activities and educational efforts to watch dog for public safety and health purposes. Instead of engaging our groups in trying to resolve public issues of concern regarding health and safety of the SmartMeter program, at least one member of the PG&E staff, PG&E William Devereaux, according to the CPSD report, infiltrated and obtained e-mails. That is a matter of record in the Investigation. We seek full, unredacted copies to be available to the public. We believe that there is a strong public interest in a corporation such as PG&E, identities of those who were involved in the spying and what they knew and when they knew it. We seek full public release of e-mails, internal e-mails between the PUC and PG&E. And we consider this of significant public interest as well as of personal interest in the aspect that our e-mails were publicly divulged without our permission to the media, and we continue to be concerned about that, those violations.

ACCOUNTABILITY FOR PG&E EMPLOYEES

CARE and Joshua Hart ask the Commission to punish PG&E by fining it² for allowing its employees to spy on the intervener groups. Without individual accountability for PG&E's employees, there is no assurance that similar actions will be prevented in the future. California Public Utilities Code sections 2109 and 2110 address the rights of regulated utility company employees' actions in a Commission proceeding. The identities of these employees- along with their seniority, and relationship with other PG&E employees and CPUC staff- are necessary for the Commission to determine how to enforce sections of the Utility Code.

There is no need to protect the PG&E employees' identities because CARE and Joshua Hart do not believe that there has been any harassment or disturbance in the private lives of any PG&E employee related to the subject matter of this proceeding. Data requests were submitted to determine whether there is any known danger to these people. If there is no known danger, the identities should be released because PG&E employees work for a public utility company and therefore are accountable to the public and PG&E's ratepayers for their conduct.

PG&E has failed to provide evidence to back up its allegations that "PG&E's employees, contractors and some customers have been subjected to escalating threats and particular threatened or actual acts of violence by anti-SmartMeter protestors." There is no evidence provided to back up these claims and therefore they should be rejected as grounds to protect identities of those who authorized the spying activity. While Joshua Hart and CARE were carrying out their right to free speech under the Constitution, PG&E were engaged in a campaign to infiltrate and spy on these protected and in some cases- private activities.

ACCOUNTABILITY FOR CPUC EMPLOYEES

The redacted portions of the CPSD report include names of persons who are not PG&E employees. The names of these individuals also should be provided to deter them from using their status as CPUC employees to interfere in a Commission proceeding to provide an advantage to any of the other parties to the proceeding.

There is a question of whether PG&E's employees were acting as instruments of the CPUC staff while they were spying on the intervener groups. If a regulated utility company

² Utilities may not operate except by permission of the commission which imposes the duties heretofore set forth together with other regulations pertinent to the operation of such organizations. VERNON LEROY SNYDER, Appellant, v. SOUTHERN CALIFORNIA EDISON COMPANY (a Corporation), Respondent. STEVE JAMES GRADICH, Appellant, v. SOUTHERN CALIFORNIA EDISON COMPANY (a Corporation), Respondent 44 Cal. 2d 793,7 (July 1, 1955)

is acting at the behest of the regulatory agency overseeing its actions, CARE and Joshua Hart have a legitimate complaint that PG&E's employees were "acting under color of law" purposefully spying on parties to a CPUC proceeding without affording them any administrative or judicial hearing so as to constitute a violation of their first, fourth, fifth and ninth amendment rights. CARE and Joshua Hart claim that this deprivation caused them to suffer monetary damages, psychological stress, public humiliation, and loss of employment, to name just a few. For this reason, they can file a lawsuit in federal district court³ requesting both compensatory and punitive damages. CARE and Joshua Hart need the names of all the individuals involved in order to file a proper complaint.

There is also statutory law stating that public employees are not provided the same rights of privacy enjoyed by other persons⁴. Generally, public employees are not guaranteed anonymity; instead the public is guaranteed the right to know the actions of their public employees. For this reason, CARE and Joshua Hart ask that the redacted portions of the CPSD report be available for public review and scrutiny.

Respectfully submitted,

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³ The ultimate issue in determining whether a person is subject to suit under section 1983 is whether the alleged infringement of federal rights is "fairly attributable to the state." [Rendell-Baker v. Kohn, 102 S.Ct. at 2770](#). Therefore, the core issue in this case is whether the defendant's action in disconnecting the plaintiff's electrical service can fairly be seen as "state action." *Id.* A state normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State. *Id.*, [102 S.Ct. at 2771](#). In other words, the inquiry must be whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself. [Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351, 95 S.Ct. 449, 453, 42 L.Ed.2d 477 \(1974\)](#). To raise a claim under section 1983, a plaintiff must allege facts which show (1) that the defendants acted under color of state law or authority, and (2) that the defendants deprived the plaintiff of a right, privilege or immunity secured by the Constitution and the law of the United States.

BOUDETTE v. ARIZONA PUBLIC SERVICE CO., 685 F.Supp. 210 (1988)

⁴ California Public Records Act; Cal. Const., art. I, § 3, subd. (b)).