

ALJ/RIM/jt2

PROPOSED DECISION

Agenda ID #15970 (Rev. 2)

Adjudicatory

4/26/2018 Item #36

Decision **PROPOSED DECISION OF ALJ MASON** (Mailed 9/1/2017)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 and Rule 1.1 of the
Rules of Practice and Procedure and
Public Utilities Code Sections 1701.2 and
1701.3.

Investigation 15-11-015

**REVISED DECISION GRANTING JOINT MOTION OF THE CITY OF
SAN BRUNO, THE CITY OF SAN CARLOS, THE OFFICE OF RATEPAYER
ADVOCATES, THE SAFETY AND ENFORCEMENT DIVISION, THE UTILITY
REFORM NETWORK, AND PACIFIC GAS AND ELECTRIC COMPANY FOR
ADOPTION OF SETTLEMENT AGREEMENT**

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Attachment A – Joint Motion for Adoption of Settlement Agreement

**REVISED DECISION GRANTING JOINT MOTION OF THE CITY OF
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ADVOCATES, THE SAFETY AND ENFORCEMENT DIVISION, THE UTILITY
REFORM NETWORK, AND PACIFIC GAS AND ELECTRIC COMPANY FOR
ADOPTION OF SETTLEMENT AGREEMENT**

Summary

This revised decision grants the Joint Motion of the City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates, the Safety and Enforcement Division, The Utility Reform Network, and Pacific Gas and Electric Company (Settling Parties), and adopts the Settlement Agreement the Joint Parties entered into and executed. The Settlement Agreement resolves the Commission's investigation into eight separate proceedings in which PG&E admittedly failed to timely report *ex parte* communications, and engaged in improper *ex parte* communications, in violation of Commission Rules of Practice and Procedure, as well as certain provisions of the Public Utilities Code.

The decision adopts both the non-financial remedies articulated in the Settlement Agreement, as well as the following financial remedies:

Financial Remedy	Amount
Gas Transmission and Storage Rate Case Ratemaking Remedy	PG&E shall forgo collection of \$63,500,000 in revenue requirements for the years 2018 and 2019
General Rate Case Ratemaking Remedy	PG&E will implement a one-time adjustment of \$10,000,000 amortized in equivalent annual amounts for its next General Rate Case cycle
Compensation payable to the City of San Bruno and the City of San Carlos	PG&E shall pay \$6,000,000 to the City of San Bruno General Fund and \$6,000,000 to the City of San Carlos General Fund
Payment to the State of California General Fund	\$12,000,000

This proceeding shall remain open to consider whether PG&E's newly disclosed e-mail communications violate the Commission's *ex parte* rules and should result in the imposition of additional fines.

1. Background

The Commission opened this investigation into Pacific Gas and Electric Company's (PG&E) failure to timely report *ex parte* communications and for engaging in improper *ex parte* communications in violation of Article 8 of the Rules of Practice and Procedure (C.C.R. Title 20, Div. 1, Ch. 1, Sections 8.1 *et seq.*), Rule 1.1 of the Rules of Practice and Procedure,¹ and Pub. Util. Code §§ 1701.2(c)² and 1701.3(c)³ related to the following proceedings:

- Rulemaking (R.) 09-01-019, Rulemaking to Examine the Commission's Energy Efficiency Risk/Reward Incentive

¹ Rule 1.1 states: Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

² Section 1701.2(c) states: (c) The commission shall provide by rule for peremptory challenges and challenges for cause of the administrative law judge. Challenges for cause shall include, but not be limited to, financial interests and prejudice. The rule shall provide that all parties are entitled to one peremptory challenge of the assignment of the administrative law judge in all cases. All parties are entitled to unlimited peremptory challenges in any case in which the administrative law judge has within the previous 12 months served in any capacity in an advocacy position at the commission, been employed by a regulated public utility, or has represented a party or has been an interested person in the case.

³ Section 1701.3(c) states: (c) An alternate decision may be issued by the assigned commissioner or the assigned administrative law judge who is not the principal hearing officer. Any alternate decision may be filed with the commission and served upon all parties to the proceeding any time prior to issuance of a final decision by the commission, consistent with the requirements of Section 311.

Mechanism (Energy Efficiency Risk/Reward Incentive Mechanism Rulemaking)

- R.11-02-019, Rulemaking to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms (Gas Pipeline Safety and Reliability Rulemaking)
- Application (A.) 09-12-020, Application of PG&E for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2011 (PG&E's 2011 General Rate Case (GRC))
- A.09-09-021, Application of PG&E for Approval of 2008 Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms (PG&E Application for Approval of 2008 LTRO Results)
- A.09-12-002, Application of PG&E for Approval of the Manzanita Wind Project and Issuance of a Certificate of Public Convenience and Necessity (PG&E Application for Approval of Manzanita Wind Project)
- A.10-02-028, Application of Pacific Gas and Electric Company for Approval of its 2010 Rate Design Window Proposal for 2-Part Peak Time Rebate and Recovery of Incremental Expenditures Required for Implementation, and consolidated matter A.10-08-005 (PG&E Application for Approval of Peak Time Rebate)
- A.14-02-008, Application of Pacific Gas and Electric Company for Compliance Review of Utility Owned Generation Operations, Electric Energy Resource Recovery Account Entries, Contract Administration, Economic Dispatch of Electric Resources, Utility Retained Generation Fuel Procurement, and Other Activities for the Period January 1 through December 31, 2013 (PG&E 2013 ERRRA Application)
- Investigation (I.) 12-01-007, Investigation into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Pub. Util. Code § 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, and related investigations I.11-02-016 and I.11-11-009. (Pipeline Investigations)

Additionally, PG&E was ordered to show cause why it should not also be found to have violated the prohibition on *ex parte* communications in the Pipeline Investigations, as alleged by the City of San Bruno in the Pipeline Investigations.

2. Rules Applicable to Pacific Gas and Electric Company (PG&E) *Ex Parte* Communications⁴

Before discussing the merits of the Joint Motion, it will be helpful to set forth the *ex parte* rules and why it is paramount that this Commission zealously enforce their application to the appropriate proceedings. With the passage of Senate Bill (SB) 960⁵ in 1996, the Legislature amended Pub. Util. Code §§ 1701, *et seq.* (Chapter 9. Hearings and Judicial Review) and created proceeding classifications for matters coming before the Commission for a vote, as well as the attendant *ex parte* communication restrictions and reporting requirements. Consistent with the legislative directive in Pub. Util. Code § 1701.1(c)(1)(C), the Commission promulgated Rules of Practice and Procedure that, *inter alia*, adopted a set of rules regarding communications with decisionmakers and advisors.

⁴ In setting forth the *ex parte* rules as they existed at the time in which PG&E violated same, the Commission acknowledges that SB 215 (Leno, ch.807, Stats. 2016) made various substantive edits to Pub. Util Code §§ 1701, *et seq.* But since these changes did not take effect until January 1, 2017, and do not apply retroactively, we judge PG&E's conduct based on the version of the *ex parte* rules as they existed during the 2010-2014 time frame in which PG&E *ex parte* communications occurred.

⁵ SB 960 (Leonard, ch. 96-0856).

2.1. What is an *Ex Parte* Communication

Pursuant to Pub. Util. Code § 1701.1(c) (4) and Rule 8(c), an *ex parte* communication has four components:

- any written or oral communication;
- between a “decisionmaker” and an “interested person”;
- in a matter before the Commission regarding a substantive (not procedural) issue; and
- that does not occur in a public hearing, workshop, other public setting, or on the record of the formal proceeding.

2.2. Who are “Decisionmakers” and “Interested Persons”

Rule 8.1(b) defines “decisionmaker” as any of the following:

- any Commissioner;
- the Chief Administrative Law Judge;
- the Assistant Chief Administrative Law Judge;
- the assigned Administrative Law Judge;
- the Law and Motion Administrative Law Judge.

Rule 8.1(d) defines “interested person” as any of the following:

(1) any party to the proceeding or the agents or employees of any party, including persons receiving consideration to represent any of them;

(2) any person with a financial interest, as described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter at issue before the Commission, or such person's agents or employees, including persons receiving consideration to represent such a person; or

(3) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission, even if that association is not a party to the proceeding.

2.3. What are the *Ex Parte* Restrictions and Reporting Requirements

The *ex parte* restrictions and reporting requirements depend on the categorization of the proceeding before the Commission.

In any quasi-legislative⁶ proceeding, *ex parte* communications are allowed without restriction or reporting requirements. (Rule 8.3(a).)

In any adjudicatory⁷ proceeding, *ex parte* communications are prohibited. (Rule 8.3(b).)

Ratesetting⁸ proceedings are the most problematic when it comes to restrictions and reporting requirements. The rules are summarized below and the text can be found in Attachment B to this decision:

All-party meetings: Pursuant to Rule 8.3(c)(1), oral *ex parte* communications are permitted at any time with a Commissioner provided that:

- The commissioner invites all parties to attend; and
- Gives not less than three days' notice before the meeting.

Individual oral communications: Pursuant to Rule 8.3(c)(2), individual oral *ex parte* communications are permitted if:

- a decisionmaker agrees to the meeting;
- the interested person requesting the meeting notifies the parties at least three days before the meeting that the request has been granted; and

⁶ Pursuant to Pub. Util. Code § 1701.1(c)(1), quasi-legislative cases are those "that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry."

⁷ Pursuant to Pub. Util. Code § 1701.1(c)(2), adjudicatory cases "are enforcement cases and complaints except those challenging the reasonableness of any rates or charges as specified in Section 1702."

⁸ Pursuant to Pub. Util. Code § 1701.1(c)(3), ratesetting cases are those "in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms."

- all other parties must be granted the same opportunity to meet with the decisionmaker.

Written *ex parte* communications: Pursuant to Rule 8.3(c)(3) written *ex parte* communications are permitted at any time provided:

- The interested person making the communication serves copies of the communication on all parties on the same day the communication is sent to a decisionmaker.

Ratesetting Deliberative Meetings and *Ex Parte* Prohibitions:

- Pursuant to Rule 8.3(c)(4)(A), the Commission may prohibit *ex parte* communications for a period beginning not more than 14 days before the day of the Commission Business Meeting at which the decision is scheduled for Commission action.
- Pursuant to 8.3(c)(4)(B), in a proceeding where a Ratesetting Deliberative Meeting has been scheduled, *ex parte* communications are prohibited from the day of the Ratesetting Deliberative Meeting through the conclusion of the Business Meeting at which the decision is scheduled for Commission action.

2.4. Duty to Report *Ex Parte* Communications

Rule 8.4 sets forth the requirements for reporting *ex parte* communications:

Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. Notice of *ex parte* communications shall be filed within three working days of the communication. The notice may address multiple *ex parte* communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information: (a) The date, time, and location of the communication, and whether it was oral, written, or a combination; (b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication; (c) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content, to which description shall be

attached a copy of any written, audiovisual, or other material used for or during the communication

2.5. *Ex Parte* Restrictions and Reporting Requirements Promote the Dual Public Policies of Openness and Due Process

2.5.1. Openness

It is California's public policy that public agencies conduct their business and meetings in public. This policy is memorialized in the Bagley-Keene Open Meeting Act (Government Code §§ 11120, *et seq.*) which states:

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.⁹

The Commission is subject to the requirement to conduct its business and meetings publicly. (*See Disenhouse v. Peevey* (2014) 226 Cal.App.4th 1096, 1102, citing to *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 797.)¹⁰

⁹ Government Code § 11120. There are exceptions to the Bagley-Keene Open Meeting Act, but as none of them apply to the issues in this proceeding, they will not be discussed in this decision.

¹⁰ Other jurisdictions have endorsed the need for open administrative proceedings. In *Sangamon Valley Television Corp v. United States* (D.C. 1959) 269 F.2d 221, which this Commission cited to in Decision (D.) 07-07-020, the Court of Appeal spoke to the fundamental importance of

Footnote continued on next page

Ex parte restrictions complement the requirement of an open proceeding. If a party wishes to communicate with a decisionmaker in a proceeding that is subject to the *ex parte* rules, the appropriate notices must be followed so that all other parties and interested persons are aware of the extent of the communications. And in those proceedings where *ex parte* communications with decisionmakers are prohibited, the parties must adhere to the prohibitions to ensure that no one party obtains an unfair advantage through illegal backchannel communications. Thus, adherence to the *ex parte* rules in an open proceeding assures the parties and the public that the Commission is conducting its proceedings with the utmost transparency, ensuring that all interested persons have a complete understanding of the processes and information that the Commission has taken into account in rendering its decisions.

2.5.2. Due Process

Hand in hand with the need for openness in its proceedings is the requirement that *ex parte* restrictions and reporting obligations be adhered to in order to ensure due process. The concept of due process of law is found both the United States Constitution¹¹ and our California Constitution.¹² While the words “due process” are not defined in either constitution, the United States Supreme Court has provided guidance and has stated that in an administrative law

open administrative proceedings: “Interested attempts to influence any member of the Commission...except by recognized and public processes go to the very core of the Commission’s quasi-judicial powers.”

¹¹ U.S. Constitution, Fourteenth Amendment: “No state shall...deprive any person of life, liberty or property without due process of law.”

¹² Cal. Const. Art. I, §7(a): “A person may not be deprived of life, liberty, or property without due process of law...”

context, due process requires some type of notice and an opportunity to be heard. (*Londoner v. Denver* (1908) 210 U.S. 373, 385-386; and *Bi-Metallic v. State Board of Equalization* (1915) 239 U.S. 441, 445.)

More recently, our California Supreme Court expressed a similar sentiment regarding the practical requirements of due process in *Today's Fresh Start, Inc. v. Los Angeles County Office of Ed.* (2013) 57 Cal.4th 197, 212:

In light of the virtually identical language of the federal and state guarantees, we have looked to the United States Supreme Court's precedents for guidance in interpreting the contours of our own due process clause and have treated the state clause's prescriptions as substantially overlapping those of the federal Constitution. (See, e.g., *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 736-737.) "The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 348; see *Cleveland Board of Education v. Loudermill* (1985) 470 U.S. 532, 546.) The opportunity to be heard must be afforded "at a meaningful time and in a meaningful manner." (*Armstrong v. Manzo, supra*, 380 U.S. at p. 552; accord, *People v. Allen* (2008) 44 Cal.4th 843, 869.) To ensure that the opportunity is meaningful, the United States Supreme Court and this court have identified some aspects of due process as irreducible minimums. For example, whenever "due process requires a hearing, the adjudicator must be impartial." (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025; see *Caperton v. A. T. Massey Coal Co.* (2009) 556 U.S. 868, 876; *Withrow v. Larkin* (1975) 421 U.S. 35, 47.) Beyond these broad outlines, however, the precise dictates of due process are flexible and vary according to context.

Under either the federal or California Constitution, due process requires that proceedings, including administrative proceedings such as the ones before this Commission, be open so that all parties have, at a minimum, notice, the

opportunity to be heard,¹³ the opportunity to present evidence and argument,¹⁴ and a decisionmaker who is free of bias for or against a party.

In *Pacific Gas & Electric Company v. Public Utilities Commission* (2015) 237 Cal.App.4th 812, 859, the Court explained the concept of due process as it applies to an administrative agency such as the Commission:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314. Four years later, our Supreme Court ruled on the application of this principle to the PUC: “Due process as to the commission’s...action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made.” (*People v. Western Air Lines Inc., supra*, 42 Cal.2d 621, 632.)

But the fundamental right to due process can be seriously undermined in the event that a party either engages in improper *ex parte* communications, or fails to report authorized *ex parte* communications. In *Matthew Zaheri Corp. v. New Motor Vehicle Board (Zaheri)* (1997) 55 Cal.App.4th 1305, 1319, the Court spoke of the harm that secret *ex parte* communications could have on the requirement of due process:

When an administrative adjudicator uses evidence outside the record there is a denial of a fair hearing because, as to that evidence, there has been no hearing at all, for the disadvantaged party has not been heard. (Citations omitted.) If a trial-type hearing is required by due process of law (*see* 2 Davis & Pierce, *Administrative Law*

¹³ *Armstrong v. Manzo* (1965) 380 U.S. 545, 550-552; *Traverso v. People ex rel Department of Transportation* (1992) 6 Cal.4th 1152, 1163-1166.

¹⁴ *Matthews v. Eldridge* (1976) 424 U.S. 319, 346-349.

Treatise (3d ed. 1994) § 9.5, pp. 43-61), its deprivation *a fortiori* violates the due process precept. The prohibitions against improper *ex parte* communications are measures imposed to avert this kind of due process violation.¹⁵

Proper adherence to the rules regarding the avoidance of improper *ex parte* communications, as well as the duty to report such communications, assures the parties and the public that the decisionmakers have comported themselves in an impartial manner. (See *Zaheri, supra*, 55 Cal.App.4th at 1319; D.07-07-020, 22.)¹⁶

When an *ex parte* violation has been found, “the Commission has broad authority under the Public Utilities Code to impose such penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the formal record and to protect the public interest.”¹⁷ The Commission may consider if sanctions should be imposed pursuant to Pub. Util. Cod §§ 701, 2107, 2108, and Rule 1.1 of the Commission’s Rules of Practice and Procedure. As such, it is the Commission’s duty, even in the context of considering whether to

¹⁵ The prohibition against *ex parte* contacts with decisionmakers by outsiders can also be found in Calif. Rule of Prof. Conduct, Rule 5-300(B): “A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except: (1) In open court; or (2) With the consent of all other counsel in such matter; or (3) In the presence of all other counsel in such matter; or (4) In writing with a copy thereof furnished to such other counsel; or (5) In *ex parte* matters.” Because of their participation in adversarial proceedings, lawyers must also be especially sensitive to prohibited *ex parte* conduct. As Professor Michael Asimov writes in “Toward a New California Administrative Procedures Act: Adjudication Fundamentals.” 39 *UCLA Law Review* 1067, 1127-1128 (1992): “The rationale for a prohibition on *ex parte* contact is familiar to all lawyers: it is deeply offensive in an adversarial system that any litigant should have an opportunity to influence the decision-maker outside the presence of opposing parties.” PG&E’s attorneys must be aware of these prohibitions and have a duty to counsel PG&E’s employees as to these restrictions.

¹⁶ *Revised Proposed Interim Decision on Alleged Ex Parte Violations*.

¹⁷ D.07-07-020, 2007 Cal. PUC LEXIS 311 *36.

approve a Settlement Agreement, to weigh the fundamental policy goals behind the Commission's *ex parte* rules to determine if the settlement terms are both a sufficient penalty and a deterrent against such conduct occurring in the future.

3. PG&E's Improper *Ex Parte* Communications and Failure to Timely Report *Ex Parte* Communications

As we stated in the background section of this decision, the Commission became aware of PG&E having engaged in improper *ex parte* communications in A.13-12-012, the Application of PG&E Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2015 – 2017 (Gas Transmission and Storage (GT&S) Proceeding). On September 15, 2014, in that proceeding, PG&E filed a "Notice of Improper *Ex Parte* Communications" giving notice of numerous written communications concerning the assignment of that proceeding to particular Administrative Law Judges (ALJs) in violation of Rule 8.3(f). By ruling dated September 17, 2014, the Law and Motion ALJ ordered PG&E to appear and show cause why it should not be sanctioned for those violations, and the Commission ultimately imposed sanctions on PG&E for those violations. (*See* D.14-11-041.)

On October 6, 2014, also in the GT&S Proceeding, PG&E filed an "Update Re September 15, 2014 Notice of Improper *Ex Parte* Communications" giving notice of improper *ex parte* oral communications with a Commissioner that had occurred on May 30, 2010, concerning matters in A.09-12-020 (PG&E's 2011 GRC), A.09-09-021 (PG&E's Application for Approval of 2008 LTRO Results), A.09-12-002 (PG&E Application for Approval of Manzana Wind Project), and R.09-01-019 (Energy Efficiency Risk/Reward Incentive Mechanisms

Rulemaking).¹⁸ These proceedings are categorized as ratesetting and, as such, are subject to Rule 8.3(c) and Rule 8.4. Rule 8.3(c) requires that notice of an individual meeting with a decisionmaker be given at least three days before the meeting, and Rule 8.4 requires that a description of the communication be reported within three business days of its occurrence.¹⁹

On December 22, 2014, in R.11-02-019 (Gas Pipeline Safety and Reliability Rulemaking) and in Pipeline Investigations, PG&E filed a “Late Notice of *Ex Parte* Communications” giving notice of improper *ex parte* communications with Commissioners that had occurred on September 9, 2011, November 21, 2011, and December 31, 2012, concerning matters in those proceedings:

Date	Sender	Recipient(s)	Subject Matter
September 20, 2011	Jerry Hallisey, Esq. Hallisey and Johnson	Brian Cherry (Vice President, Regulatory Relations, PG&E) and Thomas Bottorff (Senior Vice President—Regulatory Relations, PG&E)	E-mail summarized meeting with Commissioner Ferron. Discussed support for the gas pipeline project and cost splitting between shareholders and ratepayers.

¹⁸ This notice was subsequently filed in each of those dockets pursuant to Chief ALJ Sullivan’s December 4, 2014 ruling.

¹⁹ These rules apply to proceedings that have been categorized as ratesetting. A.09-12-020, A.09-09-021, A.09-12-002 and R.09-01-019 are categorized as ratesetting.

November 22, 2011	Jerry Hallisey	Marc Joseph, Esq. Adams, Broadwell, Joseph & Cardozo, and Bob Balgenorth, former President State Building & Construction Trades Council of California; cc to Brian Cherry and Thomas Bottorff	E-mail summarized meeting between Brian Cherry and Commissioner Florio regarding cost recovery and pipelines.
January 1, 2013	Brian Cherry	Thomas Bottorff	E-mail summarizes Brian Cherry's meeting with President Peevey regarding gas settlement, mediation, return on equity changes to PSEP, HECA, and Oakley

The Gas Pipeline Safety and Reliability Rulemaking is categorized as ratesetting and, as such, is subject to Rule 8.3(c) and Rule 8.4 as described above. The Pipeline Investigations are categorized as adjudicatory and, as such, *ex parte* communications are prohibited pursuant to Rule 8.3(b).

On June 11, 2015, in A.10-02-028 and consolidated matter (PG&E Application for Approval of Peak Time Rebate), PG&E filed late notice of an *ex parte* communication that had occurred on January 28, 2014, with a Commissioner's personal advisor:

Date	Sender	Recipient(s)	Subject Matter
January 28, 2014 (e-mail)	Sidney Dietz, PG&E	Michael Campbell, Office of Ratepayer Advocates (ORA)	Discusses elements of proposed decision.
January 28, 2014 (telephonic)	Sidney Dietz	Scott Murtishaw, advisor to President Peevey	Discussed the Joint Ruling and Amended Scoping Memo.

This proceeding is categorized as ratesetting and, as such, communications with a Commissioner's personal advisor must be reported consistent with Rule 8.4 as described above. (See Rule 8.2.)

On May 21, 2015, in A.14-02-008 (PG&E 2013 ERRRA Application), PG&E filed notice of an improper *ex parte* communication that occurred on March 6, 2014 with a Commissioner:

Date	Sender	Recipient(s)	Subject Matter
March 6, 2014	Brian Cherry	Erik Jacobson	E-mail summarizes conversation between Brian Cherry and Commissioner Florio about the assignment of Administrative Law Judge Roscow.

The communication concerned the assignment of a particular ALJ to the proceeding. Pursuant to Rule 8.3(f), "*ex parte* communications regarding the assignment of a proceeding to a particular Administrative Law Judge ... are prohibited."

In addition to admitting that it failed to comply with Rule 8, PG&E's filings demonstrate that it knowingly violated Pub. Util. Code §§ 1701.2(c) and 1701.3(c).²⁰

In order to get a sense of the full scope of PG&E's wrongdoing, the Commission said it would determine whether PG&E's admitted failure to file timely the *ex parte* notices, as well as its admission that it knowingly engaged in prohibited *ex parte* communications, constitute a violation of Rule 1.1 of the Commission's Rules of Practice and Procedure. If found, this investigation must determine what sanctions should be imposed for these violations pursuant to Pub. Util. Code §§ 701,²¹ 2107,²² and 2108.²³

Finally, this Commission said it would consider in this investigation the following allegations of *ex parte* violations raised by the City of San Bruno in the Pipeline Investigations:

²⁰ Section 1701.2(c) provides that *ex parte* communications are prohibited in adjudicatory cases. Section 1701.3(c) provides, in relevant part that a party that is granted an individual *ex parte* meeting send notice of the meeting at the time the request is granted, but "in no event shall that notice be less than three days."

²¹ Section 701 states: "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

²² Section 2107 states: "Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects 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."

²³ Section 2108 states: "Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense."

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, filed on July 28, 2014.*
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 Rule of Practice and Procedure 8.3(b) and for Sanctions and Fees, filed on November 10, 2014.*

4. The Meet and Confer Process

Pursuant to the January 8, 2016 Ruling Directing Parties to Engage in Meet and Confer Process and Setting Prehearing Conference, the parties engaged in several months of meetings where they discussed the following topics:

- Communications in the proceeding as identified in the Commission's 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 and Rule 1.1 of the Rules of Practice and Procedure and Public Utilities Code Sections 1701.2 and 1701.3 (OII Order), dated November 19, 2015;
- Additional communications that the City of San Bruno, the City of San Carlos, ORA, Safety and Enforcement Division (SED), and The Utility Reform Network (TURN) (Non-PG&E Parties) proposed adding to this proceeding;
- Factual stipulations in order to move undisputed facts into the evidentiary record so that the Commission can resolve the legal and policy issues for certain communications at issue without further discovery;
- Additional information requested by the Non-PG&E Parties (the Data Requests) regarding specific communications between PG&E and the CPUC;
- Protocols for PG&E to follow to respond to the Data Requests;

- Proposed schedule for PG&E to respond to the Data Requests;
- Proposed schedule for the remainder of the proceeding.²⁴

In addition, the parties discussed the number and categorization of the various *ex parte* communications and made the following agreement:

- Category 1 is comprised of 135 communications (1-1 through 1-135) and generally consists of e-mails transmitting information—such as an analyst report, a news article, or a press release—from a PG&E employee to one or more individuals at the CPUC. The first 36 communications (1-1 through 1-36) are communications that already are included in the proceeding per the OII Order. The remaining 99 communications (1-37 through 1-135) are additional communications that one or more of the Non-PG&E Parties propose be added to the proceeding.²⁵
- Category 2 is comprised of 24 communications (2-1 through 2-24). Category 2 generally consists of e-mails concerning PG&E activities, and many involve descriptions of oral communications. The first 10 communications (2-1 through 2-10) are communications that already are included in the proceeding per the OII Order. The remaining 14 communications (2-11 through 2-24) are additional communications that one or more of the Non-PG&E Parties proposed to be added to the proceeding.²⁶
- Category 3 is comprised of 21 communications (3-1 through 3-21). None of the Category 3 communications are currently included in the proceeding. The Category 3 communications primarily consist of communications that reference potential oral communications, including meetings, meals, encounters, or site visits involving PG&E personnel and CPUC personnel, but do not provide much detail concerning those events. The

²⁴ Joint Meet and Confer Process Report of The City of San Bruno, The City of San Carlos, The Office of Ratepayer Advocates, The Safety and Enforcement Division, The Utility Reform Network, and Pacific Gas and Electric Company (dated April 18, 2016 at 2).

²⁵ *Id.* at 4-5.

²⁶ *Id.* at 5-6.

Non-PG&E Parties have requested these Category 3 communications be included in the proceeding, asserting that while they do not appear to be *ex parte* violations themselves, the communications suggest that a violation may have occurred. The Parties have agreed to brief whether the Category 3 communications should be added to the proceeding, and have recognized that PG&E would follow a similar protocol as for Category 2 if they are included.²⁷

5. The Settlement Discussions

After completing the above discovery and agreeing to the factual stipulations, the Settling Parties held multiple settlement discussions from November 2016 through March 2017. On March 20, 2017, the Settling Parties executed the Settlement Agreement that is the subject of their Joint Motion.

On September 1, 2017, the assigned Administrative Law Judge (ALJ) served his proposed decision which approved of the Settlement Agreement in part. While the majority of the terms were acceptable as they complied with the Commission's operative standards for approving settlements, the ALJ was concerned that the proposed payment of \$1,000,000 to the State General Fund was too low in view of the severity of the *ex parte* violations, and because the State General Fund was receiving significantly less money than the amounts that would be paid to the City of San Carlos and City of San Bruno. The proposed decision gave PG&E 20 days to agree to pay an additional \$11,000,000 to the State General Fund.

On September 21, 2017, PG&E filed its *Motion in Response to September 1, 2017 Proposed Decision (September 21 Motion)*. PG&E agreed to pay an additional \$11,000,000 to the State General Fund, bringing the payment to \$12,000,000. But

²⁷ *Id.* at 7-8.

as part of its *September 21 Motion*, PG&E disclosed for the first time additional e-mails from the 2013 to 2014 time frame that “appear to raise issues similar to other communications that the Non-PG&E parties asked to bring into this proceeding and that became part of the basis for the Settlement Agreement in this matter.”²⁸ On the same day, PG&E also filed a *Motion for Leave to File Communications Containing Confidential Material Under Seal*.

On November 1, 2017, the Non-PG&E parties filed their *Joint Response* to the *September 21 Motion*. The Non-PG&E parties asked that the Commission adopt the Settlement Agreement, as modified, with PG&E paying the additional \$11,000,000 to the State General Fund. The Non-PG&E parties also asked that the Commission should open up a second phase in this proceeding to consider the additional potential *ex parte* violations that were disclosed in the *September 21 Motion*.

6. Settlement Agreement Terms

While the Settlement Agreement is attached hereto as Attachment A, we set forth the three sections that are pertinent to the Commission’s evaluation of the Settlement Agreement’s reasonableness.

6.1. PG&E’s Admissions that it Violated Commission Rules and that its Conduct Harmed Customers and Constituents

Article II, § 2.1.A: Violation of Commission Rules

During the period from 2010 to 2014, PG&E committed multiple violations of the Commission’s *ex parte* rules in Article 8 of the Rules of Practice and Procedure, through communications that were either

²⁸ *September 21 Motion* at 2.

prohibited or not reported to the Commission as required by these rules.

On at least one occasion during this time period, PG&E also violated Rule 12.6 of the Commission's Rules of Practice and Procedure, which requires that parties to settlement negotiations hold such negotiations confidential, by disclosing to a Commission decisionmaker the contents of ongoing settlement negotiations.

Finally, by the totality of these violations, PG&E also violated Commission Rule of Practice and Procedure 1.1.

Article II, § 2.1.B: Conduct Harmful to Customers and Other Constituents

PG&E's employees and agents engaged in communications with decisionmakers at the Commission, as well as related conduct that was harmful to the regulatory process. Under the unique circumstances of this case, where the two Cities who are parties to this Settlement Agreement brought certain of these communications forward and participated in proceedings which the communications concerned, it is reasonable that compensation and other financial and non-financial remedies be awarded to those two Cities as part of a comprehensive Settlement Agreement resolving these issues, and to customers more generally.

Although in the Joint Motion and the Settlement Agreement state that "PG&E committed multiple violations of the Commission's *ex parte* rules in Article 8 of the Rules of Practice and Procedure,"²⁹ neither document specifies the exact number of "multiple violations." In order to gain greater clarity on the issue, on June 19, 2017 the assigned ALJ sent an e-mail ruling that, *inter alia*, asked PG&E how many violations it committed. On June 23, 2017, PG&E filed and served its response where it admitted to 12 violations which are identified as follows:

²⁹ Joint Motion at 11.

Identification/Exhibit Number	Date	Author	Recipient (including cc's)	Comment
Tab 2-1/Ex. 2-0009	May 31, 2010	Brian Cherry, PG&E's Vice President of Regulatory Affairs	Thomas Bottorff, Senior Vice President —Regulatory Relations, PG&E	The e-mail summarizes a meeting between Brian Cherry and Michael Peevey, then President of the California Public Utilities Commission. The discussion included revisions PG&E claimed were needed to the Oakley proposed decision.
Tab 2-2/Ex.2-0019	Sept. 20, 2011	Jerry Hallisey, Esq. Hallisey and Johnson	Brian Cherry and Thomas Bottorff	The e-mail summarizes the discussion between Hallisey and Commissioner Ferron regarding the gas pipeline project and possible ratepayers' payment for upgrading the gas system.

Tab 2-3/Ex. 2-0027	Nov. 22, 2011	Jerry Hallisey	Marc Joseph, Attorney, and Bob Balgenorth. CC: Brian Cherry and Thomas Bottorff	The e-mail summarizes Brian Cherry's conversation with Commissioner Florio regarding issuing a memorandum account at the end of the OIR.
Tab 2-4/Ex.2-0039	March 2, 2012	Susan [Kennedy]	Brian Cherry	The e-mail summarizes a meeting between President Peevey and Susan regarding an independent forensic analysis.
Tab 2-5/Ex.2-0046	January 1, 2013	Brian Cherry	Thomas Bottorff	The e-mail summarizes a meeting between Cherry and Peevey regarding City of San Bruno and the Gas Settlement.
Tab 2-9/Ex.2-0066	January 28, 2014	Sidney Dietz, PG&E	Michael Campbell, ORA	The e-mail summarizes a conversation with Scott M [Murtishaw], advisor to President Peevey, regarding possible measures related to a cost-effectiveness showing.

Tab 2-10/Ex.2-0073	March 6, 2014	Brian Cherry	Erik Jacobson, Director Regulatory Affairs, PG&E, and Meredith Allen, Senior Director Regulatory Relations, PG&E	The e-mail summarizes a conversation between Brian Cherry and Commissioner Florio about whether to bump Administrative Law Judge Roscow from a proceeding.
Tab 2-11/Ex.2-0080	August 29, 2010	Brian Cherry	Thomas Bottorff	The e-mail summarizes a meeting between Brian Cherry, President Peevey, and Carol [Brown, President Peevey's Chief of Staff] about efforts to settle a GRC (General Rate Case).
Tab 2-21/Ex.2-099	Dec. 18, 2013	Brian Cherry	Commissioner Florio and Sepideh Khosrowjah, Commissioner Florio's Chief of Staff	The e-mail attaches information that was provided to another Commission employee (Elizaveta Malashenko regarding Line 147 questions.

Tab 2-22/Ex.2-0307	Dec. 18, 2013 (nine emails)	Brian Cherry	Commissioner Florio	Although listed as one exhibit, there are nine e-mails between Brian Cherry and Commissioner Florio regarding Line 147.
Tab 23/Ex.2-0318	Dec. 19, 2013	Brian Cherry	Commissioner Florio	This e-mail discusses information regarding automated valves associated with Line 147.
Tab 24/Ex.2-0331	Dec. 19, 2013	Brian Cherry	Commissioner Florio	The e-mail provides information regarding Line 147 cold weather operations.

By our count, however, there are 20 violations. One of the 12 to which PG&E admits had a total of nine e-mails (Tab 2-22). Each e-mail should be seen as a separate violation of the Commission's *ex parte* rules.

6.2. The Breakdown of PG&E's \$97.5 Million Financial Remedy

There are four components to the financial remedy:

Article II, § 2.2.A: General Fund Remedy

PG&E shall pay \$12 million to the State of California General Fund. This shall be a fine payable pursuant to Section 2100 *et seq.* of the Public Utilities Code. This payment shall not be deductible for tax purposes.

Article II, § 2.2.B: Gas Transmission and Storage Rate Case
Ratemaking Remedy

PG&E shall additionally forego collection of \$63,500,000 in revenue requirements for the years 2018 (\$31,750,000) and 2019 (\$31,750,000) as determined in its Gas Transmission and Storage rate case. This remedy shall be implemented through PG&E's Annual Gas True-up Advice Letter. The Non-PG&E Parties intend for these foregone collections of revenue requirements to be punitive in nature and therefore not tax deductible. PG&E intends that these foregone collections of revenue be compensatory in nature and that PG&E not be taxed on these foregone collections of revenue (or, in the alternative, that these foregone collections of revenue offset PG&E's taxable income).

Article II, § 2.2.C: General Rate Case Ratemaking Remedy

In order to address the Non-PG&E Parties' concerns about 1) PG&E's internal costs of improving compliance and training related to the *ex parte* rules, 2) PG&E's internal costs of litigation of any issues arising from PG&E's late filed notices of *ex parte* communications and notices of improper *ex parte* communications including litigation of this proceeding, and 3) compensation paid to certain PG&E officers from 2010 to 2014 involved in the *ex parte* communications at issue in this proceeding, PG&E shall implement a one-time adjustment of \$10,000,000 to be amortized in equivalent annual amounts over its next General Rate Case (GRC) cycle, (i.e., the GRC following the 2017 GRC). It is the Parties' intent that PG&E not be taxed on these ratemaking adjustments (or, in the alternative, that these adjustments offset PG&E's taxable income) because they are intended to compensate ratepayers for bearing PG&E's costs described in this Paragraph through GRC rates. Furthermore, for purposes of forecasting future costs in the next two GRCs before the Commission, PG&E will adjust out of recorded data those outside services costs incurred that correspond to (i) improving compliance and training related to the *ex parte* rules from September 2014 to March 2017 and (ii) litigating any issues arising from PG&E's late filed notices of *ex parte* communications and notices of improper *ex parte* communications including litigation of this proceeding. The Non-PG&E Parties shall not recommend any adjustment to the

categories of costs described in this Paragraph in the next GRC or any other rate case before the Commission on the basis that the costs described in this Paragraph were incurred by PG&E because of, or related to, the *ex parte* issues described herein.

Article II, § 2.2.D: Compensation payable to the City of San Bruno and the City of San Carlos

Within 30 days of Commission approval, PG&E shall pay:

- \$6,000,000 to the City of San Bruno General Fund.
- \$6,000,000 to the City of San Carlos General Fund.

These payments are intended to compensate the City of San Bruno and the City of San Carlos for attorneys' fees, expenses, and any other harm caused on account of the conduct described in Section 2.1.B, under the unique circumstances of this proceeding.

6.3. Changes in PG&E's Interactions with Decisionmakers, Parties, and Employees to Promote Greater Transparency and Understanding of Commission Rules

Article II, § 2.3.A: Notice of Tours Provided to CPUC Decisionmakers

For a period of two years, beginning January 1, 2018, if PG&E gives a tour of its facilities to a Commission decisionmaker, it will provide notice within three days of the tour in an open General Rate Case, Gas Transmission and Storage rate case, or other relevant cost recovery case if the facility, technology, process, or information to be addressed during the tour is at issue in such a case, and will additionally invite a representative of the Office of Ratepayer Advocates, the Safety and Enforcement Division, and The Utility Reform Network to attend the tour. The notice will include a summary of PG&E's oral presentation(s) during the tour and provide all written materials shown to or provided to a Commission decisionmaker during the tour.

Article II, § 2.3.B: Notice of Transmittals of Rating Agency and Investor Analyses to CPUC Decisionmakers

For a period of three years following Commission approval of the Settlement Agreement in this matter, if PG&E transmits via email a credit rating agency or investor report or analysis to a Commission decisionmaker, PG&E simultaneously will provide a copy to designated representatives of the Office of Ratepayer Advocates, the Safety and Enforcement Division, The Utility Reform Network, and all parties in PG&E's most recent cost of capital, General Rate Case, and Gas Transmission and Storage proceedings.

Article II, § 2.3.C: Notice of "Meet and Greet" Meetings Between Certain PG&E Officers and CPUC Decisionmakers

For a period of two years following Commission approval of the Settlement Agreement in this matter, if PG&E Corporation's Chief Executive Officer, PG&E's President, PG&E Corporation's Chief Financial Officer, or its Executive Vice President and General Counsel, participates in a meeting arranged or accepted by PG&E to be attended only by PG&E and its agents and the Commissioner and/or the Commissioner's advisors, PG&E will provide notice within three days to designated representatives of the Office of Ratepayer Advocates and The Utility Reform Network. Such notice will include any written materials used during the meeting or discussion and a summary of PG&E's oral communications.

Article II, § 2.3.D: Training for PG&E Employees

PG&E provides annual training on the Commission's *ex parte* rules, and for three years following Commission approval of the Settlement Agreement in this matter, PG&E will provide to the other Parties to I. 15-11-015 (a) a copy of the training materials used for this purpose, and (b) an annual certificate of completion for the training of all officers, Regulatory Affairs employees and Law Department attorneys. PG&E shall provide an initial training within one year of Commission approval of the Settlement Agreement in this matter.

7. Legal Standard for Evaluating Whether to Adopt or Reject Settlement Agreements

In deciding whether the Settlement Agreement should be adopted, we are guided by Rule 12.1(d) of the Commission's Rules of Practice and Procedure. That Rule states: "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with laws, and in the public interest." If the moving parties assert that the Settlement Agreement is supported by all parties, then the Commission must confirm:

- that the settlement commands the unanimous sponsorship of all active parties to the instant proceeding;
- that the sponsoring parties are fairly reflective of the affected interests;
- that no term of the settlement contravenes statutory provision or prior Commission decisions; and
- that the settlement conveys to the Commission sufficient information to permit us to discharge our future regulatory obligations with respect of the parties and their interests.³⁰

As a matter of policy, the Commission favors the settlement of disputes. (D.11-05-018, 16; D.07 05 060, 6; and D.88-12-083.) This policy supports many goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. As long as a settlement is reasonable in light of the whole record, consistent with the law, and in the public interest, it should normally be adopted without alteration. (D. 06-06-014, 12; and D. 90-08-068.)

³⁰ D.92-12-019; and D.90-08-068, 37.

There is, however, precedent that allows the Commission to reject a settlement either in its entirety or in part. Pursuant to Rule 12.4, the Commission “may reject a proposed settlement whenever it determines that the settlement is not in the public interest,” and may also “propose alternative terms to the parties to the settlement.” Although this authority seems, at first, to be contrary to the policy favoring settlements, both the authority to accept a settlement or to reject and propose alternative terms stem from the Commission’s overarching duty to adopt a settlement that is in the public interest.

It is with these policy goals in mind that we analyze the proposed settlement that the settling parties have presented to the Commission for approval.

7.1. The Settlement Agreement is Reasonable in Light of the Record as Supplemented by the Settlement Agreement

This OII has been a contentious proceeding with the Settling Parties having to deal with a myriad of factual, procedural, and legal issues engendered by PG&E’s release of approximately 67,000 e-mails. First and foremost was the need for the parties to attempt to reach an agreement on the number of *ex parte* violations that were in dispute before the proceeding. As can be seen, *supra*, after culling through the tens of thousands of e-mails that PG&E produced, the parties narrowed down the potential number of *ex parte* violations to be between 22 and 164 and grouped them into three distinct categories. That the parties were able to agree to a range of potential *ex parte* violations is a testament to the efforts that the Settling Parties exerted in reaching a consensus. Second, during the meet and confer process, the parties had to come to an agreement to stipulations and protocols that would facilitate the efficient resolution of this

proceeding. The procedural agreements that lead to the Settlement Agreement are as follows:

- Agreed to recommend adding communications to the proceeding, in order for the Commission to resolve the *ex parte* issues completely in one proceeding, and to drop others that all agreed were not violations.
- Agreed to stipulations concerning all 164 communications at issue.
- Agreed that PG&E would respond to data requests concerning emails for which the Non-PG&E Parties sought additional information.
- Agreed to a process for efficiently conducting this discovery, to ensure that information was gathered on a timeline consistent with the Commission's stated expectations, and to prevent time-consuming discovery disputes.
- Agreed to a procedure for moving undisputed facts into the evidentiary record, and to the creation of a single joint record for the proceeding.

Third, the Settling Parties had to address the legal questions of what were *ex parte* communications that required reporting, and what *ex parte* communications were prohibited. During the negotiation process, PG&E maintained that most of the communications were permissible information sharing, rather than substantive communications. Yet PG&E recognized that the Commission might find otherwise and impose substantial penalties for the harm done to the Commission, the City of San Carlos, and the City of San Bruno.

When we consider all of these factors, we find the Settlement Agreement is reasonable as it addresses PG&E's wrongful conduct, PG&E's financial payments, and PG&E's changes to its protocol for dealing with decisionmakers to make sure the wrongful conduct does not occur in the future. First, PG&E has admitted to "multiple violations of the *ex parte* rules, Rule 12.6, and Rule 1.1 of

the Commission's Rules of Practice and Procedure (Article II, §2.1.A). PG&E has admitted that these violations were harmful to customers and other constituents (Article II, §2.1B). Second, PG&E has agreed to forego \$63,500,000 in revenue requirements, make a one-time adjustment of \$10,000,000 amortized in equivalent annual amounts over its next General Rate Case, and to compensate the City of San Bruno and the City of San Carlos \$6,000,000 each (Article II, § 2.2B, C, and D). Third, PG&E has agreed to pay \$12,000,000 to the State General Fund (Article II, §2.2.A). Fourth, PG&E has agreed to implement certain protocols regarding notice of tours provided to Commission decisionmakers (Article II, § 2.3.A), notice of transmittals of rating agency and investor analyses to Commission decisionmakers (Article II, § 2.3.B), notice of meet and greet meetings between certain PG&E officers and Commission decisionmakers (Article II, § 2.3.C), and to implement annual training for PG&E employees for three years regarding *ex parte* rules (Article II, § 2.3.D). Taken together, we find the Settlement Agreement to be reasonable.

7.2. The Settlement Agreement is Consistent with Law

The issue of sanctions to be imposed encompasses consideration of Pub. Util. Code § 2107, which sets a \$500 minimum and a \$50,000 maximum fine for each offense, and § 2108, which provides that every day is a separate offense. It also encompasses consideration of the five factors to consider in assessing fines, as identified in the Affiliate Rulemaking Decision, D.98-12-075, as follows:

- How many days did each violation continue?
- What harm was caused by virtue of the violations? This includes harm to the integrity of the regulatory process.
- What was the utility's conduct in preventing, detecting, correcting, disclosing and rectifying the violation?

- What amount of fine will achieve the objective of deterrence?
- What fine or sanction has the Commission imposed under reasonably comparable factual circumstances?

Thus, in determining if the settlement is consistent with the law, we must weigh the individual settlement amounts against the factors that the Commission is required to evaluate in assessing a fine.

7.2.1. Forgoing Revenues, Making Adjustments, and Making Payments to the State General Fund, the City of San Carlos, and the City of San Bruno

To determine if this sum of \$96.5 Million is reasonable, we must look at Commission precedent in other similar proceedings which is, unfortunately, scant. As this Commission observed in *Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company*,³¹ “Commission precedent in imposing sanctions for *ex parte* violations has ranged from relatively minor fines, or none at all, to requiring training on ethics and the Commission’s *ex parte* rules, to mere admonishments.” Prior to December of 2015, the largest penalty imposed for violating the *ex parte* rules was imposed on PG&E for \$1,050,000, coupled with the requirement that PG&E’s shareholders fund a ratemaking disallowance (estimated at approximately \$72 million) in reparation to ratepayers of a significant portion of the revenue requirement that would have been collected during the five-month delay caused by PG&E’s actions.³² On December 8, 2015, the Commission issued D.15-12-016 (*Decision*

³¹ D.15-12-016, 44; see also *Decision Modifying Law and Motion Judge’s Ruling Imposing Sanctions for Violation of Ex Parte Rules* (D.14-11-041, 11 [same].)

³² D.14-11-041, 13 (20 *ex parte* violations times \$50,000, plus an additional \$50,000 for the single violation of Rule 1.1); and Ordering Paragraph 3. PG&E estimates that the disallowance will

Footnote continued on next page

Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company), wherein SCE received a fine of \$16,740,000 (\$190,000 [eight *ex parte* violations]; \$16,520,000 [continuing Rule 1.1 violation calculated at \$20,000 x 826 days]; and \$30,000 [for a second Rule 1.1 violation].) Compared with similar *ex parte* violations in other proceedings, it appears that PG&E's agreement to forgo \$63,500,000, to make a GRC adjustment of \$10,000,000, to pay \$12,000,000 to the State General Fund, and to pay \$12,000,000 to the Cities of San Bruno and San Carlos, would be the highest settlements reached. In that regard, we conclude that those aspects of the Settlement Agreement are consistent with the law.

7.3. The Settlement Agreement is in the Public Interest

As we recognized above, there is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation. With the adjustment in the amount of the fine paid to the State General Fund, we believe that this Settlement Agreement is in accordance with California's public policy favoring resolution. The Settlement Agreement has, to a great extent, put an end to years of disputes between the Commission, Commission staff, PG&E, the City of San Bruno, the City of San Carlos, ORA, SED, and TURN that has spanned at least nine separate proceedings following the San Bruno tragedy. This resolution has allowed all sides to avoid the cost of further proceedings as to these issues,

ultimately total approximately \$72 million. (Joint Motion at 20.) *See also Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company* (D.15-12-016, 46 [eight *ex parte* violations and one non-continuing Rule 1.1 violation times \$50,000 equals \$450,000].

the result of which is an uncertainty for the Settling Parties. As such, the Settlement Agreement furthers California's public interest in resolving disputes.

7.4. The Settlement Agreement has the Unanimous Sponsorship of the Parties

PG&E, the City of San Bruno, the City of San Carlos, ORA, SED, and TURN are all the parties to this proceeding and have jointly agreed to the Settlement Agreement and the Motion for adoption of same.

7.5. The Settlement Agreement Conveys Sufficient Information to Allow the Commission to Discharge its Regulatory Obligations with Respect to the Settling Parties and their Interests

The Settlement Agreement, when combined with the stipulations and exhibits accepted into evidence, has sufficient factual information to allow this Commission to discharge its regulatory obligations. Specifically, the parties have agreed that the Settlement Agreement resolves the following:

The Parties agree that this Settlement Agreement is entered to provide a comprehensive resolution of PG&E's alleged violations of the Commission's *ex parte* rules from 2010 through 2014, including the communications from: (a) the City of San Bruno's Public Records Act requests to the Commission, as described in San Bruno's July 2014 Motion; (b) documents PG&E produced to the Commission in January 2015, pursuant to a January 13, 2015 Administrative Law Judge ruling in A.13-12-012, which documents were subsequently posted on the Commission's website; (c) documents PG&E produced in discovery in A.13-12-012; and (d) communications reported to the Commission by PG&E in late-filed notices of *ex parte* communications and notices of improper communications, filed in September, October and December 2014, and May and June 2015. As such, the Non-PG&E Parties agree that they will not file or re-open any proceedings, or seek additional relief from the Commission or any other court, agency, or body for these alleged violations of the Commission's *ex parte* rules by PG&E.

The Settling Parties have detailed the steps leading up to the terms of the Settlement Agreement, the factors that the parties weighed in determining the payments, the monies PG&E agreed to forgo, as well as what steps PG&E has agreed to implement on a foregoing basis to ensure that the *ex parte* violations do not occur again in the future. The Commission believes it has sufficient information to determine that the Settlement Agreement meets the criteria set forth in Rule 12.1(d).

8. Comment Period

As the Settling Parties are in complete agreement regarding the Settlement Agreement, we deem this revised decision to be uncontested so that the 30-day comment period may be waived pursuant to Rule 14.6 (c)(2).

9. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Robert M. Mason III is the assigned ALJ in this proceeding.

Findings of Fact

1. On January 11, 2008, in D.08-01-021, the assigned Commissioner and the assigned ALJ determined that PG&E violated the Commission's *ex parte* rules after PG&E acknowledged in a May 22, 2007 filing that it had failed to provide a three-day notice of two May 17, 2007 meetings with decisionmakers concerning A.06-11-005. The Commission approved as a remedial action that PG&E should develop written best practices to document, control, and report on *ex parte* contacts.

2. On November 26, 2014, in D.14-11-041, the Commission found that PG&E committed 20 violations of Rule of Practice and Procedure 8.3(f) and a single violation of Rule 1.1 for communications between PG&E and the Commission decisionmakers concerning the assignment of the ALJ for PG&E's then-pending

GT&S case, A.13-12-012. The Commission, citing to D.08-01-021, imposed a financial penalty of \$1,050,000 for PG&E's violations, and ordered that its shareholders fund a disallowance for certain revenue to be collected from customers during the five month delay caused by the Order to Show Cause proceeding that arose from PG&E's violations. The communications at issue in this proceeding predate the Commission's decision in D.14-11-041, and in that decision the Commission acknowledged that PG&E had "admit[ted] to other improper *ex parte* communications in different proceedings" – referring to some of the communications at issue in this proceeding. In D.14-11-041, the Commission elected only to resolve *ex parte* issues concerning A.13-12-012.

3. The Commission instituted this OII on November 23, 2015.

4. The Commission's OII identified 48 communications as being at issue in this proceeding– seven communications self-reported or late-noticed by PG&E and 41 communications that the City of San Bruno alleged in its July 2014 motion were *ex parte* violations.

5. On January 8, 2016, the Commission directed the Settling Parties to engage in a substantive and detailed meet and confer process to develop an efficient procedural schedule to resolve the issues identified in the OII.

6. During the meet and confer process, the Non-PG&E Parties (i.e. the City of San Bruno, the City of San Carlos, ORA, SED, and TURN) requested that a number of communications be added to the proceeding record, which were identified from: (a) the City of San Bruno's Public Records Act requests to the Commission, as described in San Bruno's July 2014 Motion; (b) documents PG&E produced to the Commission in January 2015, pursuant to a January 13, 2015 Administrative Law Judge's Ruling in A.13-12-012, which documents were subsequently posted on the Commission's website; (c) documents PG&E

produced in discovery in A.13-12-012; and (d) communications reported to the Commission by PG&E in late filed notices of *ex parte* communications and notices of improper communications, filed in September, October and December 2014, and May and June 2015.

7. The Settling Parties conferred in detail and reached agreement regarding which communications should be added to the proceeding record and which should be not further considered.

8. In the interest of resolving all issues related to alleged *ex parte* violations efficiently and completely in a single, comprehensive proceeding, the Settling Parties agreed to add more than 100 communications to this proceeding's record – bringing the total to 164 communications.

9. The Settling Parties do not agree as to whether each of these communications are violations, though PG&E has previously acknowledged that some of these did violate the Commission's *ex parte* rules.

10. As part of the meet and confer process, the Settling Parties worked cooperatively and constructively to resolve this matter. The Settling Parties:

- Agreed to factual stipulations concerning all 164 communications at issue.
- Agreed that PG&E would respond to discovery concerning emails for which the Non-PG&E Parties sought additional information.
- Agreed to a process for efficiently conducting this discovery, to ensure that information was gathered on a timeline consistent with the Commission's stated expectations, and to prevent time-consuming discovery disputes.
- Agreed to a procedure for moving undisputed facts into the evidentiary record, to create a joint record for the proceeding.

11. After completing the discovery and factual stipulations discussed above, the Settling Parties engaged in multiple settlement discussions in person, by telephone, and by e-mail from November 2016 through March 2017.

12. As a result, the Settling Parties have entered into this Settlement Agreement, subject to approval by the Commission.

13. According to the terms of the Settlement Agreement, PG&E has agreed to do the following:

- Admit to violating the Commission's *ex parte* rules, Rule 12.6, and Rule 1.1;
- Admit that its violations have harmed its customers and constituents;
- Make a payment to the State General Fund of \$12 million;
- Forgo collection of \$63,500,000 in revenue requirements for the years 2018 and 2019 as determined in its GT&S rate case;
- Implement a one-time adjustment of \$10,000,000 to be amortized in equivalent annual amounts over its next GRC cycle;
- Make payments in the amount of \$6,000,000 each to the City of San Bruno and City of San Carlos General Funds;
- Provide notice of tours provided to Commission decisionmakers;
- Provide notice of transmittals of Rating Agency and Investor Analyses to Commission decisionmakers;
- Provide notice of meet and greet meetings between certain PG&E officers and Commission decisionmakers; and
- Provide annual training for PG&E employees regarding the Commission's *ex parte* rules.

14. On June 19, 2017, the assigned ALJ sent an e-mail ruling that asked PG&E, *inter alia*, how many *ex parte* violations it committed.

15. On June 23, 2017, PG&E filed and served its response where it admitted to 12 *ex parte* violations, which it identified by Tab number and Exhibit number.

16. PG&E's admitted violations have cast public suspicion on the integrity of the Commission's regulatory process.

17. PG&E's admitted violations have harmed the Commission's regulatory process to such an extent that the proposed \$1 million fine to the State General Fund should be increased to \$12 million, an amount commensurate to the fines that PG&E has agreed to pay to the City of San Bruno and City of San Carlos General Funds.

18. On September 1, 2017, the ALJ served his proposed decision which approved of the Settlement Agreement in part. While the majority of the terms were acceptable as they complied with the Commission's operative standards for approving settlements, the ALJ was concerned that the proposed payment of \$1,000,000 to the State General Fund was too low in view of the severity of the *ex parte* violations, and because the State General Fund was receiving significantly less money than the amounts that would be paid to the City of San Carlos and City of San Bruno. The proposed decision gave PG&E 20 days to agree to pay an additional \$11,000,000 to the State General Fund.

19. On September 21, 2017, PG&E filed its *Motion in Response to September 1, 2017 Proposed Decision (September 21 Motion)*. PG&E agreed to pay an additional \$11,000,000 to the State General Fund, bringing the payment to \$12,000,000.

20. But as part of its *September 21 Motion*, PG&E disclosed for the first time additional e-mails from the 2013 to 2014 time frame that "appear to raise issues similar to other communications that the Non-PG&E parties asked to bring into this proceeding and that became part of the basis for the Settlement Agreement in this matter." On the same day, PG&E also filed a *Motion for Leave to File Communications Containing Confidential Material Under Seal*.

21. On November 1, 2017, the Non-PG&E parties filed their *Joint Response* to the *September 21 Motion*. The Non-PG&E parties asked that the Commission adopt the Settlement Agreement, as modified, with PG&E paying the additional \$11,000,000 to the State General Fund.

22. The Non-PG&E parties also asked that the Commission open up a second phase in this proceeding to consider the additional potential *ex parte* violations that were disclosed in the *September 21 Motion*.

Conclusions of Law

1. All issues in this proceeding are encompassed by, and resolved in the Settlement Agreement.

2. The parties to the Settlement Agreement are all of the active parties in this proceeding.

3. The parties are fairly reflective of the affected interests.

4. No term of the Settlement agreement contravenes statutory provisions or prior Commission decisions.

5. The Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.

6. With the exception of the recently disclosed e-mails, the Settlement Agreement fully resolves and settles all disputed issues in the OII.

7. The Settlement Agreement should be approved.

8. PG&E's *Motion for Leave to File Communications Containing Confidential Material under Seal* should be granted.

9. The Commission should open up a second phase to determine if any of the recently disclosed e-mails violate the Commission's *ex parte* rules.

O R D E R**IT IS ORDERED** that:

1. The Settlement Agreement between the City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates, the Safety Enforcement Division, The Utility Reform Network, and Pacific Gas and Electric Company (The Parties), is approved. The Parties have agreed that Article II, § 2.2.A. is revised so that Pacific Gas & Electric Company shall pay \$12 million to the State of California General Fund.

2. Once this revised proposed decision becomes final, Pacific Gas and Electric Company shall make a payment of \$12 million, payable to the Commission and addressed as follows: California Public Utilities Commission Fiscal Office, Room 3000, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of a certified check payable to the Public Utilities Commission for credit to the State General Fund.

3. The Commission orders a second phase in this proceeding in order to determine if the e-mails that Pacific Gas and Electric Company disclosed on September 21, 2017 violate the *ex parte* rules set forth in the Commission's Rules of Practice and Procedure.

4. Investigation 15-11-015 shall remain open.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

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

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 and Rule
1.1 of the Rules of Practice and Procedure and
Public Utilities Code Sections 1701.2 and
1701.3

Investigation 15-11-015
(Filed November 23, 2015)

**JOINT MOTION OF THE CITY OF SAN BRUNO, THE CITY OF SAN CARLOS, THE
OFFICE OF RATEPAYER ADVOCATES, THE SAFETY AND ENFORCEMENT
DIVISION, THE UTILITY REFORM NETWORK, AND PACIFIC GAS AND
ELECTRIC COMPANY FOR ADOPTION OF SETTLEMENT AGREEMENT**

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Dated: March 28, 2017

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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

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**JOINT MOTION OF THE CITY OF SAN BRUNO, THE CITY OF SAN CARLOS, THE
OFFICE OF RATEPAYER ADVOCATES, THE SAFETY AND ENFORCEMENT
DIVISION, THE UTILITY REFORM NETWORK, AND PACIFIC GAS AND
ELECTRIC COMPANY FOR ADOPTION OF SETTLEMENT AGREEMENT**

In accordance with Rule 12.1 of the Commission’s Rules of Practice and Procedure, the City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates (“ORA”), the Safety and Enforcement Division (“SED”), The Utility Reform Network (“TURN”) (collectively, the “Non-PG&E Parties”), and Pacific Gas and Electric Company (“PG&E”) (together with the Non-PG&E Parties, the “Parties”) respectfully move for Commission approval and adoption of the attached all-party Settlement Agreement, which includes an agreement for supplementing the record of this proceeding with the Parties’ stipulated facts, data requests and responses, and other supporting documents, as described in Article I of the Settlement Agreement and attached thereto. If adopted without modification, the Settlement Agreement will resolve all issues raised in this proceeding.

The Settlement Agreement is reasonable in light of the record as supplemented in Article I of the Settlement Agreement, consistent with the law, and in the public interest.

I. BACKGROUND AND PROCEDURAL HISTORY

This matter concerns communications between PG&E and Commission personnel from 2010 to 2014. Twelve communications in this proceeding were either self-reported or late-

noticed by PG&E as ex parte violations. After reviewing communications obtained from PG&E or public sources as described below, the Non-PG&E Parties allege that an additional 152 communications that are part of the record of this proceeding were violations. While the Parties disagree as to whether many of the communications included in this proceeding violated the Commission's ex parte rules, PG&E acknowledges that it has violated these rules with regard to some of the communications, and the Parties have reached an agreement that is reasonable in light of all the circumstances. The Settlement Agreement relies upon the factual stipulations by the Parties as the foundation for a resolution supported by all Parties that includes admissions by PG&E regarding its prior communications, heightened reporting obligations placed on PG&E for its future communications with Commission decisionmakers, and a substantial financial remedy totaling \$86.5 million allocated amongst customers, the cities who brought some of these communications forward or were parties in the proceedings affected by them, and the State of California's General Fund. PG&E's customers will bear no costs associated with the financial remedies.

The following background and procedural history provides an overview of the events that gave rise to this proceeding and the resulting Settlement Agreement.

A. Initial Identification and Responses to Ex Parte Issues

In July 2014, the City of San Bruno filed a lawsuit in a California Superior Court to compel the Commission to comply with four records¹ requests made by the City in February of 2014. In July 2014, the Commission produced to the City of San Bruno approximately 7,000 pages of records responsive to the requests, including email communications between the Commission and PG&E relating to the September 9, 2010 explosion in San Bruno. Based on some of these

¹ San Bruno's initial Public Records Act request was dated May 30, 2013.

communications, the City of San Bruno filed a motion asking the Commission to order PG&E to show cause why it should not be sanctioned for 41 of the email communications.² The City of San Bruno contended that these 41 emails reflected prohibited ex parte communications concerning the then-pending San Bruno Order Instituting Investigations (“OII”) (Investigation (“I”).12-01-007, I.11-02-016, and I.11-11-009).

While opposing the City of San Bruno’s motion, PG&E recognized the serious issues raised and conducted a voluntary review of tens of thousands of email communications between it and the Commission over a nearly five-year period beginning in 2010.³ In September 2014, PG&E disclosed that its review of approximately 65,000 emails had revealed what it believed to be ex parte violations concerning the selection of the Administrative Law Judge (“ALJ”) for PG&E’s Gas Transmission and Storage (“GT&S”) rate case, Application (“A”) 13-12-012, for which PG&E was sanctioned by the Commission in November 2014.⁴ Previously, in January 2008, in Decision (“D”) 08-01-021, the Commission had determined that PG&E violated the Commission’s ex parte rules after PG&E acknowledged that it had failed to provide a three day notice of two meetings with decisionmakers concerning proceeding A. 06-11-005. The Commission approved as a remedial action that PG&E should develop and implement a “best-in-class regulatory compliance model for ensuring compliance with the ex parte rules.”⁵

On October 30, 2014, the City of San Bruno issued a data request to PG&E in A. 13-12-012 seeking copies of the email communications reviewed by PG&E and referenced in

² See *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 Communication) and for Sanctions and Fees* (“San Bruno’s July 2014 Motion to Show Cause”), filed July 28, 2014.

³ See D.14-11-041 at 10-11.

⁴ See *id* at 3-4.

⁵ See D.08-01-021 at 15, and Ordering Paragraph 3; D.14-11-041 at 17.

connection with its September 2014 disclosure of ex parte violations in that proceeding. On December 15, 2014, the City of San Bruno filed a motion to compel PG&E to produce the approximately 65,000 emails.⁶ On December 22, 2014, PG&E announced that it would provide copies of the emails to the Commission. In January 2015, PG&E provided the emails to the Commission and the City of San Bruno, pursuant to a January 13, 2015 ruling in A. 13-12-012, which, among other things, granted the City of San Bruno's motion to compel. The Commission subsequently made these emails available to the public on its website.⁷

PG&E self-reported additional communications in other proceedings in the months following its September 2014 ALJ reassignment disclosure in A. 13-12-012.⁸ And in 2015, PG&E produced tens of thousands of internal emails and attachments to TURN, ORA, and the City of San Bruno, in response to discovery requests in PG&E's then-pending GT&S case. Communications from each of these document productions by PG&E are among the 164 communications at issue here.

Prior to the initiation of this OII, PG&E took several steps to respond to the identified ex parte violations, including:

- Appointing a new head of Regulatory Affairs.
- Creating the new role of Chief Ethics and Compliance Officer.
- Retaining Ken Salazar, former Secretary of the U.S. Department of the Interior, U.S. Senator from Colorado, Attorney General of Colorado, and Executive Director of the Colorado Department of Natural Resources, to assist in developing a compliance model.
- Beginning plans for new mandatory training for PG&E employees who interact with the Commission.

⁶ <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M143/K914/143914150.PDF>

⁷ <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M144/K784/144784609.PDF>

⁸ See D.14-11-041 at 4-5.

- Separating three officers from the company.⁹

B. Overview of the History of this OII

1. The Initiation of the OII

On April 9, 2015, the San Bruno OIIs culminated in PG&E being penalized \$1.6 billion and the Commission determining that the ex parte allegations that the City of San Bruno raised should be addressed in a separate OII – which ultimately became this proceeding.¹⁰

On November 23, 2015, the Commission instituted this proceeding.¹¹ The Commission’s OII Order identified 48 communications at issue in this proceeding – 7 communications self-reported or late-noticed by PG&E and 41 communications the City of San Bruno alleged were ex parte violations in its 2014 motions.¹²

2. Meet and Confer Process

On January 8, 2016, the Commission directed the Parties “to engage in a substantive and detailed meet and confer process to develop an efficient procedural schedule proposal to resolve the issues identified in the Commission’s decision.”¹³ In response to the Commission’s Meet

⁹ *Id.* at 10-11.

¹⁰ *Decision on Fines and Remedies to be Imposed on Pacific Gas and Electric Company for Specific Violations in Connection with the Operation and Practices of its Natural Gas Transmission Systems Pipelines*, dated April 9, 2015 at 173.

¹¹ *See 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 and Rule 1.1 of the Rules of Practice and Procedure and Public Utilities Code Sections 1701.2 and 1701.3 (“OII Order”)*, dated November 19, 2015.

¹² *See San Bruno’s July 2014 Motion to Show Cause; see also 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 Rule of Practice and Procedure 8.3(b) and for Sanctions and Fees*, filed November 10, 2014.

¹³ *Assigned Commissioner and Administrative Law Judge’s Ruling Directing Parties to Engage in Meet and Confer Process and Setting Prehearing Conference (“Meet and Confer Order”)*, dated January 8, 2016.

and Confer Order, beginning in January 2016 the Parties engaged in a lengthy and productive meet and confer process, and submitted several status reports to the Commission. As a result of these meet and confer efforts, the Parties agreed to add more than 100 communications to this proceeding, including communications identified from: (a) the City of San Bruno's Public Records Act requests to the Commission, as described in San Bruno's July 2014 Motion to Show Cause; (b) documents PG&E produced to the Commission in January 2015, pursuant to a January 13, 2015 Administrative Law Judge ruling in A. 13-12-012, which documents were subsequently posted on the Commission's website, (c) documents PG&E produced in discovery in A. 13-12-012, and (d) communications reported to the Commission by PG&E in late filed notices of ex parte communications and notices of improper communications, filed in September, October and December 2014, and May and June 2015.¹⁴ In its Joint Ruling dated July 12, 2016, the Commission agreed to adopt the Parties' recommendations regarding the communications to be included in this proceeding.¹⁵

As part of the continuing meet and confer process, the Parties worked cooperatively and constructively to develop a factual record that would permit this matter to be resolved efficiently.

The Parties:

- Agreed to recommend adding communications to the proceeding, in order for the Commission to resolve the ex parte issues completely in one proceeding, and to drop others that all agreed were not violations.
- Agreed to stipulations concerning all 164 communications at issue.
- Agreed that PG&E would respond to data requests concerning emails for which the Non-PG&E Parties sought additional information.

¹⁴ While agreeing to add these communications to the scope of the proceeding, PG&E has not admitted that each is a violation.

¹⁵ *Assigned Commissioner and Administrative Law Judge's Joint Ruling Revising Preliminary Scoping Memorandum* ("Joint Ruling"), dated July 12, 2016.

- Agreed to a process for efficiently conducting this discovery, to ensure that information was gathered on a timeline consistent with the Commission's stated expectations, and to prevent time-consuming discovery disputes.
- Agreed to a procedure for moving undisputed facts into the evidentiary record, and to the creation of a single joint record for the proceeding.

During the meet and confer process, as the Parties discussed whether to add or drop communications, the Parties developed three categories to organize the communications. This organization was driven by discovery considerations, including identifying communications that could be addressed solely by factual stipulations and those that required additional diligence, as opposed to the actual substance of the communications.

Category 1 is comprised of 135 emails (1-1 through 1-135), most of which transmit information – such as an analyst report, a news article, or a press release – from PG&E to Commission personnel.¹⁶ The first 36 emails (1-1 through 1-36) were identified in San Bruno's July 2014 Motion to Show Cause and referred to in the Commission's OII Order.¹⁷ The remaining 99 emails (1-37 through 1-135) were added to this proceeding at the request of the Non-PG&E Parties and with PG&E's agreement.¹⁸ The Parties further agreed that factual and evidentiary issues concerning the Category 1 communications could be resolved by stipulation.¹⁹ Accordingly, the Parties submitted joint factual stipulations to the Commission on September 1, 2016.

¹⁶ *Joint Meet and Confer Process Report of the City of San Bruno, the City of San Carlos, the Office of ratepayer Advocates, the Safety and Enforcement Division, The Utility Reform Network, and Pacific Gas and Electric Company* ("Parties' First Joint Status Report"), dated April 18, 2016 at 4.

¹⁷ *Id.* During the meet and confer process, the Parties agreed to drop five of the original 41 emails identified in San Bruno's July 2014 Motion to Show Cause.

¹⁸ *Id.*

¹⁹ *Id.* at 5.

Category 2 is comprised of 22 emails²⁰ – 12 self-reported or late-noticed by PG&E and 10 identified by the Non-PG&E Parties and added to the case at their request. PG&E has apologized for those communications that it self-reported. Aside from PG&E’s self-reports and late-noticed communications, the remaining 10 Category 2 emails include both direct email communications between PG&E and Commission personnel, and emails that summarize or refer to communications between them.

The Parties agreed that PG&E would respond to data requests for each of the Category 2 communications.²¹ Accordingly, the Non-PG&E Parties served PG&E with data requests concerning them (“Category 2 Data Requests”).²² To ensure that discovery was conducted efficiently and without dispute, PG&E proposed and the Non-PG&E Parties agreed to a protocol for conducting discovery in response to the Category 2 Data Requests (“Category 2 Protocol”).²³ The Parties also filed with the Commission joint factual stipulations regarding the 22 Category 2 communications on November 18, 2016.

Category 3 began as 21 emails, which the Non-PG&E Parties sought to include in the proceeding to determine through discovery whether they believed a violation occurred.²⁴ To that end, the Non-PG&E Parties served data requests (“Category 3 Data Requests”) directed to PG&E concerning these communications, as they did with Category 2. Moreover, because the

²⁰ Category 2 previously consisted of 24 communications, but the Parties agreed to drop 2 of the communications—Tabs 2-7 and 2-8.

²¹ Parties’ First Joint Status Report at 6.

²² *Id.*

²³ *Id.* at 6-7; *see also* Settlement Agreement, Exhibit 2 [Ex. 2-0001 – Ex. 2-0007]. PG&E applied the Category 2 Protocol and served the Non-PG&E Parties with its Data Request Responses on September 1, 2016. The Non-PG&E Parties had some follow-up questions regarding them, to which PG&E provided supplemental responses on November 3, 2016.

²⁴ Parties’ First Joint Status Report at 7-8.

Commission had “declined to require PG&E to devote hundreds of additional hours” to discovery regarding the Category 3 communications,²⁵ the Parties worked cooperatively to agree on a narrower protocol that PG&E would apply in responding to the Category 3 Data Requests (“Category 3 Protocol”).²⁶ After the Category 3 Protocol was applied by PG&E to answer the Category 3 Data Requests, the Non-PG&E Parties agreed to reduce the number of Category 3 emails at issue to seven. Emails remaining in Category 3 generally refer to, but do not summarize in significant detail, communications between PG&E and Commission personnel. Parties filed joint factual stipulations on November 18, 2016, for these seven Category 3 communications.

3. Settlement Discussions

After completing the discovery and factual stipulations discussed above, from November 2016 through March 2017, the Parties engaged in multiple settlement discussions in person, by telephone, and by email. On March 27, 2017, the Parties executed the Settlement Agreement that is the subject of this motion. On March 20, 2017, the Parties noticed a settlement conference for March 27, 2017 at 10:00 a.m.

II. SUMMARY OF SETTLEMENT AGREEMENT

A. Parties and Effective Date

The Parties to the Settlement Agreement include all the Parties to the proceeding: the City of San Bruno, the City of San Carlos, ORA, SED, TURN and PG&E. The Effective Date of

²⁵ Joint Ruling at 7.

²⁶ See Settlement Agreement, Exhibit 3 [Ex. 3-0001 – Ex. 3-0005]. PG&E served its Category 3 Data Request Responses on the Non-PG&E Parties on September 21, 2016. Similar to Category 2, the Non-PG&E Parties had some follow-up questions, to which PG&E provided supplemental responses on November 3, 2016.

the Settlement Agreement is the date of a final Commission order approving the Settlement Agreement.

B. Record of the Proceeding

Article I, § 1.1 of the Settlement Agreement notes that the Parties have worked together to prepare a comprehensive Joint Record for this proceeding, and requests that the Commission accept this Joint Record into the record of the proceeding. The order of presentation and categorization of the materials in the Joint Record follows the description above (e.g., Categories 1, 2, and 3). The Categories have no significance for the settlement valuation (e.g., Category 1 is no more or less significant than Category 3 or Category 2).

Article I, § 1.2 notes that all documents related to Category 1 can be found in Exhibit 1, Volumes A through H, which is attached to the Settlement Agreement. Article I, § 1.3 states that all documents related to Category 2 can be found in Exhibit 2. Lastly, Article I, § 1.4 notes that all documents related to Category 3 can be found in Exhibit 3.

In accordance with Article I of the Settlement Agreement, the Parties request that the following documents be moved into the record:

- Exhibit 1, Volumes A through H;
- Exhibit 2; and
- Exhibit 3.

Given the voluminous nature of these documents, they will be submitted to the Commission's Docket Office on archival disks for retention by the Commission with a hard copy version of this filing.

C. Settlement Terms

Article II contains the terms of the Settlement Agreement.

Article II, § 2.1 concerns admissions and provides that at the Non-PG&E Parties' request, PG&E agreed to add a number of communications to this proceeding in the interest of resolving all issues related to the alleged ex parte violations. Article II, § 2.1 further provides that by adding these communications, PG&E was not admitting that each communication was a violation. And although the Parties do not agree that each of these communications is a violation, PG&E makes admissions in the interest of resolving these issues in a comprehensive settlement. The admissions are as follows:

Article II, § 2.1.A: Violation of Commission Rules

During the period from 2010 to 2014, PG&E committed multiple violations of the Commission's ex parte rules in Article 8 of the Rules of Practice and Procedure, through communications that were either prohibited or not reported to the Commission as required by these rules.

On at least one occasion during this time period, PG&E also violated Rule 12.6 of the Commission's Rules of Practice and Procedure, which requires that parties to settlement negotiations hold such negotiations confidential, by disclosing to a Commission decisionmaker the contents of ongoing settlement negotiations.

Finally, by the totality of these violations, PG&E also violated Commission Rule of Practice and Procedure 1.1.

Article II, § 2.1.B: Conduct Harmful to Customers and Other Constituents

PG&E's employees and agents engaged in communications with decisionmakers at the Commission, as well as related conduct that was harmful to the regulatory process. Under the unique circumstances of this case, where the two Cities who are parties to this Settlement Agreement brought certain of these communications forward and participated in proceedings which the communications concerned, it is reasonable that compensation and other financial and non-financial remedies be awarded to those two

Cities as part of a comprehensive Settlement Agreement resolving these issues, and to customers more generally.

Article II, § 2.2 provides for financial remedies set forth in the Settlement Agreement.

Section 2.2 states that in order to reach a comprehensive resolution of PG&E's alleged violations of the Commission's ex parte rules from 2010 through 2014, without the need for the Commission to rule on each communication, or determine which communications could be characterized as continuing violations, PG&E will pay a total financial remedy of \$86.5 million, as set forth in the following provisions.

Article II, § 2.2.A: General Fund Remedy

PG&E shall pay \$1 million to the State of California General Fund. This shall be a fine payable pursuant to Section 2100 *et seq.* of the Public Utilities Code. This payment shall not be deductible for tax purposes.

Article II, § 2.2.B: Gas Transmission and Storage Rate Case Ratemaking Remedy

PG&E shall additionally forego collection of \$63,500,000 in revenue requirements for the years 2018 (\$31,750,000) and 2019 (\$31,750,000) as determined in its Gas Transmission and Storage rate case. This remedy shall be implemented through PG&E's Annual Gas True-up Advice Letter. The Non-PG&E Parties intend for these foregone collections of revenue requirements to be punitive in nature and therefore not tax deductible. PG&E intends that these foregone collections of revenue be compensatory in nature and that PG&E not be taxed on these foregone collections of revenue (or, in the alternative, that these foregone collections of revenue offset PG&E's taxable income).

Article II, § 2.2.C: General Rate Case Ratemaking Remedy

In order to address the Non-PG&E Parties' concerns about 1) PG&E's internal costs of improving compliance and training related to the ex parte rules, 2) PG&E's internal costs of litigation of any issues arising from PG&E's late filed notices of ex parte communications and notices of improper ex parte communications including litigation of this proceeding, and 3) compensation paid to certain PG&E officers from 2010 to 2014 involved in the ex parte communications at issue in this proceeding, PG&E shall

implement a one-time adjustment of \$10,000,000 to be amortized in equivalent annual amounts over its next General Rate Case (“GRC”) cycle, (i.e., the GRC following the 2017 GRC). It is the Parties’ intent that PG&E not be taxed on these ratemaking adjustments (or, in the alternative, that these adjustments offset PG&E’s taxable income) because they are intended to compensate ratepayers for bearing PG&E’s costs described in this Paragraph through GRC rates. Furthermore, for purposes of forecasting future costs in the next two GRCs before the Commission, PG&E will adjust out of recorded data those outside services costs incurred that correspond to (i) improving compliance and training related to the ex parte rules from September 2014 to March 2017 and (ii) litigating any issues arising from PG&E’s late filed notices of ex parte communications and notices of improper ex parte communications including litigation of this proceeding. The Non-PG&E Parties shall not recommend any adjustment to the categories of costs described in this Paragraph in the next GRC or any other rate case before the Commission on the basis that the costs described in this Paragraph were incurred by PG&E because of, or related to, the ex parte issues described herein.

Article II, § 2.2.D: Compensation payable to the City of San Bruno and the City of San Carlos

Within 30 days of Commission approval, PG&E shall pay:

- \$6,000,000 to the City of San Bruno General Fund.
- \$6,000,000 to the City of San Carlos General Fund.

These payments are intended to compensate the City of San Bruno and the City of San Carlos for attorney’s fees, expenses, and any other harm caused on account of the conduct described in Section 2.1.B, under the unique circumstances of this proceeding. It is the Parties’ intent that these payments will be tax deductible to PG&E.

Article II, § 2.3 provides for non-financial remedies set forth in the Settlement Agreement. The non-financial remedies are meant to impose requirements on PG&E independent of the Commission’s Rules. Therefore, the additional requirements shall not apply to any event or communication for which PG&E, in conformance with Commission rules, files an ex parte notice with the Commission. The Parties do not intend these requirements to reflect in any way their respective positions concerning the scope and applicability of the Commission’s

Rules, nor are these requirements intended to apply in lieu of them. The non-financial remedies are as follows:

Article II, § 2.3.A: Notice of Tours Provided to CPUC
Decisionmakers

For a period of two years, beginning January 1, 2018, if PG&E gives a tour of its facilities to a Commission decisionmaker, it will provide notice within three days of the tour in an open General Rate Case, Gas Transmission and Storage rate case, or other relevant cost recovery case if the facility, technology, process, or information to be addressed during the tour is at issue in such a case, and will additionally invite a representative of the Office of Ratepayer Advocates, the Safety and Enforcement Division, and The Utility Reform Network to attend the tour. The notice will include a summary of PG&E's oral presentation(s) during the tour and provide all written materials shown to or provided to a Commission decisionmaker during the tour.

Article II, § 2.3.B: Notice of Transmittals of Rating Agency
and Investor Analyses to CPUC
Decisionmakers

For a period of three years following Commission approval of the Settlement Agreement in this matter, if PG&E transmits via email a credit rating agency or investor report or analysis to a Commission decisionmaker, PG&E simultaneously will provide a copy to designated representatives of the Office of Ratepayer Advocates, the Safety and Enforcement Division, The Utility Reform Network, and all parties in PG&E's most recent cost of capital, General Rate Case, and Gas Transmission and Storage proceedings.

Article II, § 2.3.C: Notice of "Meet and Greet" Meetings
Between Certain PG&E Officers and
CPUC Decisionmakers

For a period of two years following Commission approval of the Settlement Agreement in this matter, if PG&E Corporation's Chief Executive Officer, PG&E's President, PG&E Corporation's Chief Financial Officer, or its Executive Vice President and General Counsel, participates in a meeting arranged or accepted by PG&E to be attended only by PG&E and its agents and the Commissioner and/or the Commissioner's advisors, PG&E will provide notice within three days to designated representatives of the Office of Ratepayer Advocates and The Utility Reform Network. Such

notice will include any written materials used during the meeting or discussion and a summary of PG&E's oral communications.

Article II, § 2.3.D: Training for PG&E Employees

PG&E provides annual training on the Commission's ex parte rules, and for three years following Commission approval of the Settlement Agreement in this matter, PG&E will provide to the other Parties to I. 15-11-015 (a) a copy of the training materials used for this purpose, and (b) an annual certificate of completion for the training of all officers, Regulatory Affairs employees and Law Department attorneys. PG&E shall provide an initial training within one year of Commission approval of the Settlement Agreement in this matter.

D. Additional Terms

Article III provides for general provisions of the Settlement Agreement. Article III addresses Commission approval of the Settlement Agreement, including the effective date, the confidentiality of settlement communications, and notes that the Settlement Agreement complies with Commission Rule of Practice and Procedure 12.1(d). Article III, § 3.4 concerns all-party support of the Settlement Agreement and notes that the Parties shall jointly request Commission approval of the Settlement Agreement and actively support its prompt approval, whether through appearances, briefing, or otherwise. Article III, § 3.5 discusses the issues resolved by the Settlement Agreement and states that:

The Parties agree that this Settlement Agreement is entered to provide a comprehensive resolution of PG&E's alleged violations of the Commission's ex parte rules from 2010 through 2014, including the communications from: (a) the City of San Bruno's Public Records Act requests to the Commission, as described in San Bruno's July 2014 Motion; (b) documents PG&E produced to the Commission in January 2015, pursuant to a January 13, 2015 Administrative Law Judge ruling in A. 13-12-012, which documents were subsequently posted on the Commission's website; (c) documents PG&E produced in discovery in A. 13-12-012; and (d) communications reported to the Commission by PG&E in late filed notices of ex parte communications and notices of improper communications, filed in September, October and December 2014, and May and June 2015. As such, the Non-

PG&E Parties agree that they will not file or re-open any proceedings, or seek additional relief from the Commission or any other court, agency, or body for these alleged violations of the Commission's ex parte rules by PG&E.

By resolving all issues related to PG&E's alleged ex parte violations associated with the communications from 2010 to 2014 at issue in this proceeding, this Settlement Agreement eliminates the need for the Commission to revisit these communications or expend resources reopening proceedings related to the communications. This complete and efficient resolution is in the interest of the Commission, the Parties, and the public.

Article III further addresses additional terms common to settlements of this type, including that the Settlement Agreement will not have precedential effect, that the standard of review for the Settlement Agreement is whether the settlement is "reasonable in light of the whole record, consistent with law, and in the public interest," and that the Settlement Agreement shall be governed by the law of the State of California and the Rules of the California Public Utilities Commission.

III. THE SETTLEMENT AGREEMENT IS REASONABLE IN LIGHT OF THE WHOLE RECORD, CONSISTENT WITH LAW, AND IN THE PUBLIC INTEREST

A. Legal Standard for Settlement Agreements

Rule 12.1(d) provides that "[t]he Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." As discussed below, the Settlement Agreement meets these criteria.

B. The Settlement is Reasonable in Light of the Record as Supplemented by the Settlement Agreement

This proceeding was initiated in order to determine what sanctions should be imposed on PG&E for ex parte violations reported by PG&E and other alleged violations.²⁷ There is no dispute that the communications occurred. The record in this proceeding, as reflected in the materials specified in Article I of the Settlement Agreement, is well developed and contains substantial factual stipulations, data requests and responses, and other supporting documents that would have provided the basis for contesting this matter if it proceeded, and now provide the foundation for the Commission to approve this Settlement Agreement. While the Commission has not adjudicated the merits of the Parties' disputes concerning the total number of violations, or the penalties to be imposed, the Settlement Agreement represents concessions by all Parties in the interest of resolving these complex and uncertain issues.

Previously, the Non-PG&E Parties have taken the position that most or all of the 164 communications at issue violated the Commission's ex parte rules, and that many could be found to be continuing violations. The Non-PG&E Parties have further contended that some of the communications could be determined to be multiple violations, either because they involve more than one decisionmaker or more than one proceeding. The Non-PG&E Parties also argue that the financial remedies must be substantial because of the repetitive nature of PG&E's alleged unlawful communications, the particularly troubling character (to the Non-PG&E Parties) of at least some of the 164 communications, and the fact that the sanctions adopted by the Commission when it previously found PG&E in violation of the ex parte rules did not have the intended deterrent effect.

²⁷ See OII Order 4-5.

Several of the communications self-reported by PG&E concerned the City of San Carlos and the hearing on repressurization of Line 147 before the Commission on December 19, 2013 in I.11-11-009, which implicated the City's interests. At that hearing, the Mayor of San Carlos spoke for the City. Unbeknownst to the Mayor and the City, PG&E and Commission decisionmakers engaged in several email communications the day before and the morning of the hearing concerning issues relevant to the repressurization proceeding. These emails are among the communications at issue here. The City of San Carlos has indicated that it had spent months preparing to evaluate and become informed on issues in the repressurization matter, hired an expert, and spent significant time and resources to prepare for and participate in the Commission proceedings concerning the repressurizations.

PG&E, on the other hand, while recognizing the seriousness of the conduct at issue, contends that most of the communications at issue are permissible information sharing from a regulated entity to its regulator, not substantive communications concerning open proceedings that constitute ex parte violations. Therefore, PG&E argues that most of the 164 communications were not violations, and that even those that are found to be violations would not be determined to be continuing violations. PG&E acknowledges, however, that the Commission may find that some communications, including its self-reports, did violate the Commission's rules, and that it has already paid substantial financial penalties for certain communications involving the same individuals who are no longer with PG&E, in PG&E's GT&S proceeding.²⁸

²⁸ In September 2014, PG&E reported ex parte communications concerning the selection of the ALJ for PG&E's GT&S case, for which it has paid a financial remedy whose various components total more than \$72 million. See D.14-11-041 at 3-4, 10-11.

In light of these differing positions, the Parties recognize that the potential outcome of this contested matter could fall below or above the financial terms set forth in the Settlement Agreement. Yet, the Parties have analyzed the record and arrived at a Settlement Agreement that addresses the seriousness of the conduct at issue, while recognizing their disagreement over the number of violations at hand. The Parties' ability to advance varying viewpoints yet resolve this matter is a strong indication that the overall outcome is reasonable in light of all the circumstances. Accordingly, the Parties submit that the Settlement Agreement is reasonable in light of the whole record.

C. The Settlement Agreement is Consistent with Law

In agreeing to the terms of the Settlement Agreement, the Parties considered the relevant statutes, rules and Commission decisions, and worked to ensure that the Settlement Agreement complies with all.

Historically, the Commission's decisional guidance regarding ex parte communications has been limited and Commission "precedent in imposing sanctions for ex parte violations has ranged from relatively minor fines, or none at all, to requiring training on ethics and the Commission's ex parte rules."²⁹ Prior to 2014, *SBC Commc 'ns, Inc.* was the Commission's most thorough discussion of the rules.³⁰ Since then, the Commission's 2014 ex parte decision in PG&E's GT&S case, and its 2015 San Onofre Nuclear Generating Station ("SONGS") ex parte decision, have become the primary precedents against which to analyze the issues in this matter.³¹ In PG&E's GT&S case, the Commission found 20 violations of Rule 8.3(f) for

²⁹ *Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company* ("SONGS ex parte decision"), dated December 8, 2015 at 44.

³⁰ *SBC Commc 'ns, Inc.*, 2007 Cal. PUC LEXIS 311.

³¹ See D.14-11-041; SONGS ex parte decision.

communications between PG&E and the Commission, as well as a single violation of Rule 1.1, the Commission's ethics rule.³² The Commission imposed a financial penalty of \$1,050,000 for PG&E's violations, and ordered that its shareholders fund a disallowance for certain revenue to be collected from customers during the five-month delay caused by the Order to Show Cause proceeding that arose from PG&E's violations – a disallowance which ultimately will total approximately \$72 million.³³ In the SONGS ex parte decision, the Commission addressed more than 70 alleged ex parte communications between Southern California Edison ("SCE") and the Commission, concluding that eight communications violated Rule 8.4 and that SCE twice violated Rule 1.1.³⁴ For its Rule 8.4 and Rule 1.1 violations, SCE received a financial penalty of \$16,740,000, which included a continuing violation premised upon actions taken by SCE in defending the ex parte issues raised in that matter.³⁵

Here, if approved, this Settlement Agreement will represent the largest financial remedy ever imposed by the Commission in a decision addressing violations of its ex parte rules. The bulk of the financial remedy (\$73,500,000) will directly benefit customers, consistent with the Commission's decision in PG&E's GT&S rate case, and with the policy set forth in the recently amended Cal. Pub. Util. Code § 1701.6(c), which was passed after the events at issue here. While the new legislation does not apply to the matters at issue in this proceeding, the Settlement Agreement is strongly influenced by the legislative mandate of this statute, which requires that penalties assessed by the Commission for ex parte violations by rate-regulated entities like

³² D.14-11-041 at 6.

³³ *See id.* at 30-32.

³⁴ *Id.* at 2-3; *Amended Administrative Law Judge's Ruling Finding Violations of Rule 8.4, Requiring Reporting of Ex Parte Communications, and Ordering SCE to Show Cause Why it Should Not Also be Found in Violation of Rule 1.1 and be Subject to Sanctions for All Rule Violations* ("SONGS amended ruling"), dated August 5, 2015 at 5.

³⁵ SONGS ex parte decision at 2-3.

PG&E take the form of credits to the customers of such entities. A smaller portion of the financial remedy (\$12,000,000) will compensate two municipalities that have been significantly affected by and were instrumental in identifying many of the ex parte issues relevant here and raising awareness concerning these issues generally.

Moreover, in light of upcoming changes to the Commission's ex parte rules, the Parties note that a determination of the precise number of violations in this proceeding will be a lengthy and nuanced endeavor that will consume Commission resources, while providing limited precedential value. New legislation has passed and new Commission rules are forthcoming that will govern future communications with the Commission.³⁶ Further, PG&E has agreed to certain reporting obligations, beyond those required by the Commission's ex parte rules, for its future communications as part of this Settlement Agreement. These developments significantly reduce the usefulness of communication-by-communication dispositions by the Commission in this proceeding because future communications will be subject to a different set of rules and requirements.

Consistent with the law, it is within the Commission's discretion to impose the agreed upon financial terms. Pursuant to Public Utilities Code section 2107:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects 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.

³⁶ See Senate Bill 215 (2016).

Rule 8.3(j) gives the Commission broader authority to “impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the formal record and to protect the public interest.” Furthermore, Public Utilities Code Section 2108 provides, that “every violation of any...rule...of the commission by any corporation or person is a separate and distinct offense, and in the case of a continuing violation, each day’s continuance thereof shall be a separate and distinct offense.” The Commission has been tasked with interpreting what “continuing” means through its decisions.³⁷ While the Commission has not found a violation of Rule 8.4 to be a continuing violation in the past, it has retained the discretion to do so.³⁸ While the Parties disagree as to whether a continuing violation would be warranted in this matter, the total financial remedy included in the Settlement Agreement contemplates a potential financial outcome in which one or more continuing violations might be imposed if this case were to be fully contested.

The total financial remedy is an appropriate compromise of the competing positions in light of the totality of the circumstances, is an amount that is within the Commission’s discretion to impose, and is consistent with relevant statutes, rules, and Commission decisions. Therefore, the Settlement Agreement is consistent with law.

D. The Settlement Agreement is in the Public Interest

The Commission has a “long-standing policy favoring settlements.”³⁹ As the Commission has stated, the “Commission favors settlements because they generally support worthwhile goals, including reducing the expense of litigation, conserving scarce Commission

³⁷ SONGS ex parte decision at 37.

³⁸ *Id.* at 38. *See also*, D.15-06-035 (denying rehearing of D.14-11-041) at 4.

³⁹ *Application of California-American Water Company*, D.10-06-038, 2010 Cal. PUC LEXIS 224 at 46.

resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.”⁴⁰ Furthermore, the Commission has held that a settlement that “commands broad support among participants fairly reflective of the affected interests” and “does not contain terms which contravene statutory provisions or prior Commission decisions” meets the “public interest” criterion.⁴¹

Here, the Settlement Agreement is consistent with the Commission’s policy in support of settlement. Adoption of the Settlement Agreement will conserve the Commission’s resources and achieve a final resolution of the proceeding in less time, and at less cost, to the public and the Parties than would be the case if this matter were to be fully litigated. Also, the Settlement Agreement is supported by participants who fairly reflect the affected interests, and it does not contravene statutory provisions or Commission precedent, as discussed above. The Settlement Agreement is sponsored by the utility, PG&E, the CPUC’s staff, SED, ORA and TURN, and two cities whose constituents are customers, the City of San Bruno and the City of San Carlos. Together, the Parties’ collective agreement to recommend adoption of the Settlement Agreement supports the notion that the settlement is in the public interest.

Furthermore, specific terms of the Settlement Agreement serve the public interest. For example, with regard to the monetary component of the Settlement Agreement, \$73,500,000 will directly benefit customers, and \$12,000,000 compensates the harmed municipalities that brought certain of the contested communications to light and were participants in the proceedings affected by them. The City of San Bruno has indicated that it has spent a significant amount of

⁴⁰ *Application of Southern California Edison Company*, D.10-12-035, 2010 Cal. PUC LEXIS 467 at 87; *see also Application of Golden State Water Co.*, D.10-11-035, 2010 Cal. PUC LEXIS 495 at 17.

⁴¹ *See Decision Approving Settlement Agreement for Southern California Edison Company’s and Pacific Gas and Electric Company’s Economic Development Rate Program* (D.10-06-015), dated June 3, 2010 at 11-12, citing 1992 Cal. PUC LEXIS 867 at 16.

time and resources on the ex parte issues that are the subject of this proceeding and diverted thousands of staff hours away from other pressing city priorities, projects, and initiatives. The City of San Bruno has been an active participant in several of the Commission proceedings alleged to be relevant to the communications at issue here, as well as this proceeding itself, and has advocated for ex parte reform through the California legislature. The City of San Bruno's efforts have brought awareness to these issues and have contributed to the ex parte rule reforms at the Commission and recently enacted by the legislature.

By structuring the financial remedy in this manner, the public, specifically, customers will be direct beneficiaries of the Settlement Agreement. Furthermore, several of the non-monetary terms in the Settlement Agreement serve the public interest. For instance, PG&E will be subject to heightened notice requirements concerning certain classes of communications, and is required to provide additional training on the Commission's ex parte rules, for a period of time following approval of the Settlement Agreement. These remedies foster greater transparency, accountability, and ethical conduct, which is in the public's interest.

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IV. CONCLUSION

The Parties have reached a Settlement Agreement that is reasonable in light of the record as supplemented by the materials described in the Settlement Agreement, consistent with law, and in the public interest. The Parties respectfully request the Commission grant this Joint Motion and approve the Settlement Agreement.

Respectfully Submitted on behalf of the Parties,

By: _____ /s/
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Dated: March 28, 2017

ATTACHMENT A

**IN THE MATTER OF THE 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 AND RULE 1.1 OF THE RULES OF PRACTICE AND PROCEDURE AND PUBLIC
UTILITIES CODE SECTIONS 1701.2 AND 1701.3
I. 15-11-015**

SETTLEMENT AGREEMENT

March 27, 2017

The City of San Bruno, the City of San Carlos, the Office of Ratepayer Advocates, the Safety and Enforcement Division, The Utility Reform Network (collectively, the “Non-PG&E Parties”), and Pacific Gas and Electric Company (“PG&E”) (together with the Non-PG&E Parties, the “Parties”) agree to settle Investigation (“I.”) 15-11-015 (the “OII”) on the following terms and conditions, which will become effective on the date of a Final Order by the California Public Utilities Commission (the “CPUC” or “Commission”) approving this Settlement Agreement.

RECITALS

The following recitals are provided to set forth the nature of the events that gave rise to the OII and the resulting Settlement Agreement.

1. On January 11, 2008, in Decision (“D.”) 08-01-021, the assigned Commissioner and the assigned Administrative Law Judge (“ALJ”) determined that PG&E violated the Commission’s ex parte rules after PG&E acknowledged in a May 22, 2007 filing that it had failed to provide a three day notice of two May 17, 2007 meetings with decisionmakers concerning Application (“A.”) 06-11-005. The Commission approved as a remedial action that PG&E should develop written best practices to document, control, and report on ex parte contacts.
2. On November 26, 2014, in D. 14-11-041, the Commission found that PG&E committed 20 violations of Rule of Practice and Procedure 8.3(f) and a single violation of Rule 1.1 for communications between PG&E and the Commission decisionmakers concerning the assignment of the ALJ for PG&E’s then-pending Gas Transmission and Storage (“GT&S”) case, A. 13-12-012. The Commission, citing to D. 08-01-021, imposed a financial penalty of \$1,050,000 for PG&E’s violations, and ordered that its shareholders fund a disallowance for certain revenue to be collected from customers during the five-month delay caused by the Order to Show Cause proceeding that arose from PG&E’s violations. The communications at issue in this proceeding predate the Commission’s decision in D. 14-11-041, and in that decision the Commission acknowledged that PG&E had “admit[ted] to other improper ex parte communications in different proceedings” – referring to some of the communications at issue in this proceeding. In D. 14-11-041, the Commission elected only to resolve ex parte issues concerning A. 13-12-012.

3. The Commission instituted this Order Instituting Investigation (OII) on November 23, 2015.
4. The Commission's OII identified 48 communications as being at issue in this proceeding – 7 communications self-reported or late-noticed by PG&E and 41 communications that the City of San Bruno alleged in its July 2014 motion were ex parte violations.¹
5. On January 8, 2016, the Commission directed the Parties to engage in a substantive and detailed meet and confer process to develop an efficient procedural schedule to resolve the issues identified in the OII.
6. During the meet and confer process, the Non-PG&E Parties requested that a number of communications be added to the proceeding record, which were identified from: (a) the City of San Bruno's Public Records Act requests to the Commission, as described in San Bruno's July 2014 Motion; (b) documents PG&E produced to the Commission in January 2015, pursuant to a January 13, 2015 Administrative Law Judge's ruling in A. 13-12-012, which documents were subsequently posted on the Commission's website; (c) documents PG&E produced in discovery in A. 13-12-012; and (d) communications reported to the Commission by PG&E in late filed notices of ex parte communications and notices of improper communications, filed in September, October and December 2014, and May and June 2015.
7. The Parties conferred in detail and reached agreement regarding which communications should be added to the proceeding record and which should be not further considered.
8. In the interest of resolving all issues related to alleged ex parte violations efficiently and completely in a single, comprehensive proceeding, the Parties agreed to add more than 100 communications to this proceeding's record – bringing the total to 164 communications.
9. The Parties do not agree as to whether each of these communications are violations, though PG&E has previously acknowledged that some of these did violate the Commission's ex parte rules.
10. As part of the meet and confer process, the Parties worked cooperatively and constructively to resolve this matter. The Parties:
 - Agreed to factual stipulations concerning all 164 communications at issue.
 - Agreed that PG&E would respond to discovery concerning emails for which the Non-PG&E Parties sought additional information.

¹ See *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 Communication) and for Sanctions and Fees* ("San Bruno's July 2014 Motion"), filed July 28, 2014 in I. 12-01-007, I. 11-11-009, and I. 11-02-016.

- Agreed to a process for efficiently conducting this discovery, to ensure that information was gathered on a timeline consistent with the Commission's stated expectations, and to prevent time-consuming discovery disputes.
 - Agreed to a procedure for moving undisputed facts into the evidentiary record, to create a joint record for the proceeding.
11. After completing the discovery and factual stipulations discussed above, the Parties engaged in multiple settlement discussions in person, by telephone, and by email from November 2016 through March 2017.
12. As a result, the Parties have entered into this Settlement Agreement, subject to approval by the Commission.

ARTICLE I JOINT RECORD

- 1.1 The Parties have prepared a comprehensive Joint Record for this proceeding, attached to this settlement as Exhibits 1, 2, and 3, and request that it be accepted into the record of this proceeding by the Commission. The Joint Record is organized by Category 1, Category 2, and Category 3, as detailed in the Parties' Joint Motion for Adoption of Settlement Agreement. These categories were developed for discovery purposes only, and have no bearing on the number or severity of any alleged violations in this matter. For each category, the attached record consists of tabbed sections including communications and related documents. These tabs include, the Parties' stipulations; PG&E's data request responses; and exhibits and supplemental data request responses and exhibits.
- 1.2 Documents related to Category 1 can be found in Exhibit 1, Volumes A through H.
- 1.3 Documents related to Category 2 can be found in Exhibit 2.
- 1.4 Documents related to Category 3 can be found in Exhibit 3.

ARTICLE II TERMS OF THE SETTLEMENT

2.1 Admissions

The Non-PG&E Parties requested, and PG&E agreed to add a number of communications to this proceeding in the interest of resolving all issues related to the alleged ex parte violations. By adding these communications, PG&E was not admitting that each communication was a violation. Although the Parties do not agree as to whether each of these communications is a violation, PG&E makes the following admissions in the interest of resolving these issues in a comprehensive settlement:

2.1.A Violation of Commission Rules

During the period from 2010 to 2014, PG&E committed multiple violations of the Commission's ex parte rules in Article 8 of the Rules of Practice and Procedure, through communications that were either prohibited or not reported to the Commission as required by these rules.

On at least one occasion during this time period, PG&E also violated Rule 12.6 of the Commission's Rules of Practice and Procedure, which requires that parties to settlement negotiations hold such negotiations confidential, by disclosing to a Commission decisionmaker the contents of ongoing settlement negotiations.

Finally, by the totality of these violations, PG&E also violated Commission Rule of Practice and Procedure 1.1.

2.1.B Conduct Harmful to Customers and Other Constituents

PG&E's employees and agents engaged in communications with decisionmakers at the Commission, as well as related conduct that was harmful to the regulatory process. Under the unique circumstances of this case, where the two Cities who are parties to this Settlement Agreement brought certain of these communications forward and participated in proceedings which the communications concerned, it is reasonable that compensation and other financial and non-financial remedies be awarded to those two Cities as part of a comprehensive Settlement Agreement resolving these issues, and to customers more generally.

2.2 Financial Remedies

In order to reach a comprehensive resolution of PG&E's alleged violations of the Commission's ex parte rules from 2010 through 2014, without the need for the Commission to rule on each communication, or determine which communications could be characterized as continuing violations, PG&E will pay a total financial remedy of \$86.5 million, as set forth in the following provisions. Ratepayers will bear no costs associated with the financial remedies set forth below.

2.2.A General Fund Remedy

PG&E shall pay \$1 million to the State of California General Fund. This shall be a fine payable pursuant to Section 2100 *et seq.* of the Public Utilities Code. This payment shall not be deductible for tax purposes.

2.2.B Gas Transmission and Storage Rate Case Ratemaking Remedy

PG&E shall additionally forego collection of \$63,500,000 in revenue requirements for the years 2018 (\$31,750,000) and 2019 (\$31,750,000) as determined in its Gas Transmission and Storage rate case. This remedy shall be implemented through PG&E's Annual Gas True-up Advice Letter. The Non-PG&E Parties intend for these foregone collections of revenue requirements to be punitive in nature and therefore not tax deductible. PG&E intends that these foregone collections of revenue be compensatory in nature and that PG&E not be taxed on these foregone

collections of revenue (or, in the alternative, that these foregone collections of revenue offset PG&E's taxable income).

2.2.C General Rate Case Ratemaking Remedy

In order to address the Non-PG&E Parties' concerns about 1) PG&E's internal costs of improving compliance and training related to the ex parte rules, 2) PG&E's internal costs of litigation of any issues arising from PG&E's late filed notices of ex parte communications and notices of improper ex parte communications including litigation of this proceeding, and 3) compensation paid to certain PG&E officers from 2010 to 2014 involved in the ex parte communications at issue in this proceeding, PG&E shall implement a one-time adjustment of \$10,000,000 to be amortized in equivalent annual amounts over its next General Rate Case ("GRC") cycle, (i.e., the GRC following the 2017 GRC). It is the Parties' intent that PG&E not be taxed on these ratemaking adjustments (or, in the alternative, that these adjustments offset PG&E's taxable income) because they are intended to compensate ratepayers for bearing PG&E's costs described in this Paragraph through GRC rates. Furthermore, for purposes of forecasting future costs in the next two GRCs before the Commission, PG&E will adjust out of recorded data those outside services costs incurred that correspond to (i) improving compliance and training related to the ex parte rules from September 2014 to March 2017 and (ii) litigating any issues arising from PG&E's late filed notices of ex parte communications and notices of improper ex parte communications including litigation of this proceeding. The Non-PG&E Parties shall not recommend any adjustment to the categories of costs described in this Paragraph in the next GRC or any other rate case before the Commission on the basis that the costs described in this Paragraph were incurred by PG&E because of, or related to, the ex parte issues described herein.

2.2.D Compensation Payable to the City of San Bruno and the City of San Carlos

Within 30 days of Commission approval, PG&E shall pay:

- \$6,000,000 to the City of San Bruno General Fund.
- \$6,000,000 to the City of San Carlos General Fund.

These payments are intended to compensate the City of San Bruno and the City of San Carlos for attorney's fees, expenses, and any other harm caused on account of the conduct described in Section 2.1.B, under the unique circumstances of this proceeding. It is the Parties' intent that these payments will be tax deductible to PG&E.

2.3 Non-Financial Remedies

The following remedies are meant to impose requirements on PG&E independent of the Commission's Rules. Therefore, these additional requirements shall not apply to any event or communication for which PG&E, in conformance with Commission rules, files an ex parte notice with the Commission. The Parties do not intend these requirements to reflect in any way

their respective positions concerning the scope and applicability of the Commission's Rules, nor are these requirements intended to apply in lieu of them.

2.3.A Notice of Tours Provided to CPUC Decisionmakers

For a period of two years, beginning January 1, 2018, if PG&E gives a tour of its facilities to a Commission decisionmaker, it will provide notice within three days of the tour in an open General Rate Case, Gas Transmission and Storage rate case, or other relevant cost recovery case if the facility, technology, process, or information to be addressed during the tour is at issue in such a case, and will additionally invite a representative of the Office of Ratepayer Advocates, the Safety and Enforcement Division, and The Utility Reform Network to attend the tour. The notice will include a summary of PG&E's oral presentation(s) during the tour and provide all written materials shown to or provided to a Commission decisionmaker during the tour.

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For a period of three years following Commission approval of the Settlement Agreement in this matter, if PG&E transmits via email a credit rating agency or investor report or analysis to a Commission decisionmaker, PG&E simultaneously will provide a copy to designated representatives of the Office of Ratepayer Advocates, the Safety and Enforcement Division, The Utility Reform Network, and all parties in PG&E's most recent cost of capital, General Rate Case, and Gas Transmission and Storage proceedings.

2.3.C Notice of "Meet and Greet" Meetings Between Certain PG&E Officers and CPUC Decisionmakers

For a period of two years following Commission approval of the Settlement Agreement in this matter, if PG&E Corporation's Chief Executive Officer, PG&E's President, PG&E Corporation's Chief Financial Officer, or its Executive Vice President and General Counsel, participates in a meeting arranged or accepted by PG&E to be attended only by PG&E and its agents and the Commissioner and/or the Commissioner's advisors, PG&E will provide notice within three days to designated representatives of the Office of Ratepayer Advocates and The Utility Reform Network. Such notice will include any written materials used during the meeting or discussion and a summary of PG&E's oral communications.

2.3.D Training for PG&E Employees

PG&E provides training on the Commission's ex parte rules, and for three years following Commission approval of the Settlement Agreement in this matter, PG&E will provide to the other Parties to I. 15-11-015 (a) a copy of the training materials used for this purpose, and (b) an annual certificate of completion for the training of all officers, Regulatory Affairs employees and Law Department attorneys. PG&E shall provide an initial training within one year of Commission approval of the Settlement Agreement in this matter.

ARTICLE III
GENERAL PROVISIONS

3.1 Settlement Effective Date

This Settlement Agreement will become effective upon issuance by the Commission of a Final Order approving this Settlement Agreement without modification or condition or, if modified or conditioned, upon its acceptance as so modified by the Parties. For purposes of this Settlement Agreement, a Commission order will be deemed a Final Order on the last date for filing an application for rehearing if no application is filed by that date, or if any request for rehearing is filed, as of the date on which rehearing is denied, or a Final Order is issued after rehearing.

3.2 Confidentiality of Settlement Communications

This Settlement Agreement is submitted on the condition that, if the Settlement Agreement does not become effective, it will not constitute any part of the record in this proceeding or be used for any other purpose. The communications among the Parties that have produced this Settlement Agreement have been conducted on the explicit understanding that they were undertaken subject to Rule 12.6 of the Commission's Rules of Practice and Procedure, and the rights of the Parties with respect thereto are not impaired or waived by this Settlement Agreement, or the Parties' Joint Motion for Adoption of Settlement Agreement.

3.3 Complies with Commission Rule of Practice and Procedure

This Settlement Agreement complies with Commission Rule of Practice and Procedure 12.1(d). This Settlement Agreement is reasonable in light of the whole record, consistent with law, and in the public interest, as set forth in the concurrently filed Parties' Joint Motion for Adoption of Settlement Agreement.

3.4 Joint Support

The Parties shall jointly request Commission approval of this Settlement Agreement. The Parties additionally agree to actively support prompt approval of the Settlement Agreement. Active support shall include written and oral testimony if testimony is required, appearances, briefing, filing an Appeal of a Presiding Officer's decision, and other means as needed to obtain the approvals sought.

3.5 Issues Resolved

The Parties agree that this Settlement Agreement is entered to provide a comprehensive resolution of PG&E's alleged violations of the Commission's ex parte rules from 2010 through 2014, including the communications from: (a) the City of San Bruno's Public Records Act requests to the Commission, as described in San Bruno's July 2014 Motion; (b) documents PG&E produced to the Commission in January 2015, pursuant to a January 13, 2015 Administrative Law Judge ruling in A. 13-12-012, which documents were subsequently posted on the Commission's website; (c) documents PG&E produced in discovery in A. 13-12-012; and (d) communications reported to the Commission by PG&E in late filed notices of ex parte

communications and notices of improper communications, filed in September, October and December 2014, and May and June 2015. As such, the Non-PG&E Parties agree that they will not file or re-open any proceedings, or seek additional relief from the Commission or any other court, agency, or body for these alleged violations of the Commission's ex parte rules by PG&E.

3.6 Not Precedential in Any Further Proceedings

This Settlement Agreement will not be cited as an example of precedent, nor will it be deemed an admission to bind any Party (except in any proceeding to enforce this Settlement Agreement or as otherwise expressly provided for in Paragraph 2.1.A herein), in any future proceedings, including, but not limited to, any Commission proceedings or any other public utility commission proceedings in another state, and will not be deemed precedential or prejudicial to any Party's rights.

3.7 Applicable Standard of Review

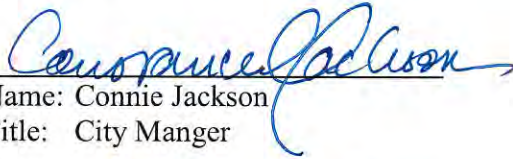
Commission Rule of Practice and Procedure 12.1(d) provides that the Commission will not approve a settlement, whether contested or not, unless the settlement is "reasonable in light of the whole record, consistent with law, and in the public interest." The Parties agree that this standard applies to the Commission's review of this Settlement Agreement.

3.8 Governing Law

This Settlement Agreement shall be governed by the laws of the State of California and the Rules of the California Public Utilities Commission.

The Parties' authorized representatives have duly executed this Settlement Agreement on behalf of the Parties they represent.

CITY OF SAN BRUNO


Name: Connie Jackson
Title: City Manger
Date: March 27, 2017

**SAFETY AND ENFORCEMENT
DIVISION**

Name: Gregory Heiden
Title: Attorney For Safety and
Enforcement Division

Date: _____

CITY OF SAN CARLOS

Name: Jeff Maltbie
Title: City Manager

Date: _____

THE UTILITY REFORM NETWORK

Name: Hayley Goodson
Title: Staff Attorney

Date: _____

**OFFICE OF RATEPAYER
ADVOCATES**

Name: Elizabeth Echols
Title: Director

Date: _____

**PACIFIC GAS AND ELECTRIC
COMPANY**

Name: Robert S. Kenney
Title: Vice President of CPUC Regulatory
Affairs

Date: _____

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Name: Jeff Maltbie
Title: City Manager

Date: 3-27-17

THE UTILITY REFORM NETWORK

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Title: Staff Attorney

Date: _____

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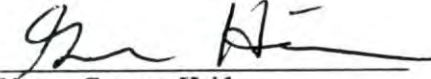
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Date: 3/27/17

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Title: City Manager

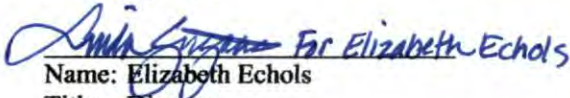
Date: _____

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Title: Staff Attorney

Date: _____

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Title: Director

Date: 3/27/2017

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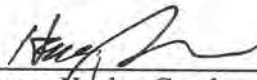
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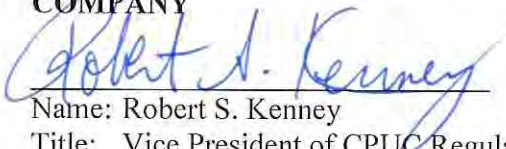
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Title: Vice President of CPUC Regulatory
Affairs

Date: 3/27/2017

EXHIBIT 1

**EXHIBIT 1 IS NOT ATTACHED AS IT EXCEEDS THE FILE SIZE
LIMITATION. DOCUMENTS CAN BE OBTAINED BY
FOLLOWING DIRECTIONS CONTAINED WITHIN THE NOTICE
OF AVAILABILITY.**

EXHIBIT 2

**EXHIBIT 2 IS NOT ATTACHED AS IT EXCEEDS THE FILE SIZE
LIMITATION. DOCUMENTS CAN BE OBTAINED BY
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EXHIBIT 3

**EXHIBIT 3 IS NOT ATTACHED AS IT EXCEEDS THE FILE SIZE
LIMITATION. DOCUMENTS CAN BE OBTAINED BY
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OF AVAILABILITY.**

(End of Attachment A)