

Decision 19-12-013 December 5, 2019

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

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

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Summary

This decision grants the *Joint Motion of the City of San Bruno, the City of San Carlos, the Public Advocates Office, the Safety and Enforcement Division, The Utility Reform Network, and Pacific Gas and Electric Company* (PG&E) (Parties), and adopts the Phase II Settlement Agreement the Parties entered into and executed. The Phase II 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 Phase II 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 \$5,000,000 in revenue requirements during the term of its 2019 Gas Transmission and Storage general rate case
General Rate Case Ratemaking Remedy	PG&E shall forgo collection of \$1,000,000 in revenue requirements in its 2020 General Rate Case cycle
Compensation payable to the City of San Bruno and the City of San Carlos	PG&E shall pay \$1,000,000 to the City of San Bruno General Fund and \$1,000,000 to the City of San Carlos General Fund
Payment to the State of California General Fund	\$2,000,000

This proceeding is closed.

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 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)

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.

- 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 Manzana Wind Project and Issuance of a Certificate of Public Convenience and Necessity (PG&E Application for Approval of Manzana 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.

1.1. The Phase I Settlement

In Decision (D.) 18-04-014, the Commission adopted the settlement agreement in Phase I of this proceeding with penalties and forbearances totaling \$97.5 million. But since PG&E produced, in September of 2017, additional e-mails from the 2013-2014 time frame that appeared to raise issues similar to other communications that the Non-PG&E parties sought to include in the record, the Commission ordered this Phase II of the proceeding in order to address whether any of the newly produced e-mails violate the Commission's *ex parte* rules.

1.2. Phase II and the Resulting Settlement

During Phase II, PG&E searched for and reviewed e-mail and hard copy documents in its custody in response to Data Requests issued by the Public Advocates Office (PAO) and Safety and Enforcement Division (SED). PG&E's investigation identified the following:

- Documents showing that former PG&E employee, Brian Cherry, sent or received information in his communications on behalf of PG&E regarding Commission jurisdictional matters.
- Documents showing that former Commissioners, Michael Peevey and Timothy Simon, and former General Counsel, Frank Lindh, sent or received information through their personal e-mail accounts, in addition to their Commission-issued e-mail accounts, regarding Commission jurisdictional matters.
- Documents showing that PG&E consultants, Susan Kennedy and Dan Richard, sent or received information using business and/or personal e-mail accounts regarding Commission jurisdictional matters.

PG&E also reviewed the hard copy documents collected from Thomas Bottorff (former Senior Vice President of Regulatory Affairs), Brian Cherry (former Vice President of Regulatory Relations), and Trina Horner (former

Vice President of Regulatory Proceedings and Rates) upon their departures from PG&E. Following discovery and negotiations, on May 15, 2019, the Parties submitted a proposed evidentiary record (the Joint Evidentiary Record). Also on May 15, 2019, the Parties filed a *Motion to Adopt Joint Evidentiary Record*.

With this Joint Evidentiary Record in place, the Parties engaged in settlement discussions. There were several in-person and telephonic discussions, which culminated in a term sheet and eventually because the Phase II Settlement Agreement that is attached to this decision. In reaching the Phase II Settlement Agreement, the Parties recognize that they are resolving claims that arise from serious misconduct on PG&E's part. But the Parties also recognize that they would unlikely be able to agree on the specific number of *ex parte* violations. Since such a disagreement could result in a lengthy and factually contentious evidentiary hearing, the Parties believe it prudent and expedient to reach the Phase II Settlement Agreement. Yet having done so, PG&E states it has condemned the conduct that is the subject of Phase II of this proceeding and asserts that it is committed to transparency and compliance with the Commission's rules and the provisions of the Public Utilities Code.

2. Joint Motion and Phase II Settlement Agreement Terms

On June 28, 2019, the Parties filed their *Joint Motion for Adoption of the Phase II Settlement Agreement (Motion)* which is divided into three major sections: admissions, financial remedies, and non-financial remedies. The terms are set forth verbatim below.

2.1. Admissions

Article II, Paragraph 2.1 of the Phase II Settlement Agreement sets forth PG&E's admissions, including two admissions by PG&E in the Phase I Settlement Agreement:

2.1.A In 2012, PG&E retained former California Public Utilities Commission Commissioner Susan Kennedy as a consultant to lobby the Commission in proceedings, including the San Bruno pipeline explosion investigations (I.12-01-007, I.11-11-009, and I.11-02-016) and the Line 147 Order to Show Cause proceeding (R.11-02-019), where ex parte communications were prohibited by Commission rules.

2.1.B During the time period in which Ms. Kennedy was providing lobbying services to PG&E before the Commission, PG&E Vice President Brian Cherry, acting on behalf of PG&E, was aware of and authorized certain communications between Ms. Kennedy and Commission decisionmakers in proceedings in which ex parte communications were prohibited, which violated the Commission's ex parte communication rules.

2.1.C Ms. Kennedy was an agent of PG&E while also representing another party (Bottle Rock Power, LLC) that was negotiating with PG&E for contract approval before the Commission.

2.1.D As agreed to in the Phase I Settlement Agreement, during the period from 2010 to 2014, PG&E committed multiple violations of the Commission's ex parte communication 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. By the totality of these violations, PG&E also violated Commission Rule of Practice and Procedure 1.1.

2.1.E As agreed to in the Phase I Settlement Agreement, 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

Article II, Paragraph 2.2 sets forth the financial remedies to be paid by PG&E under the Settlement Agreement. The Parties have agreed that PG&E “[r]atepayers will bear no costs associated with the financial remedies” under the Phase II Settlement Agreement. (Bold added.) PG&E will pay a total financial penalty of \$10 million, to be allocated as follows:

2.2.A General Fund Remedy

PG&E shall pay \$2 million to the State of California General Fund. This shall be payable to the Government pursuant to Section 2100 *et seq.* of the Public Utilities Code.

2.2.B Gas Transmission and Storage Rate Case Ratemaking Remedy

PG&E shall additionally forego collection of \$5,000,000 in revenue requirements during the term of its 2019 Gas Transmission and Storage rate case. This remedy shall be implemented through PG&E’s Annual Gas True-up Advice Letter or such mechanism as may be agreed upon by the Parties. The amount above shall be allocated among and within customer classes in accordance with the applicable allocation and ratemaking methodologies then adopted by the Commission.

2.2.C General Rate Case Ratemaking Remedy

PG&E shall additionally forego collection of \$1,000,000 in revenue requirements in its 2020 General Rate Case (“GRC”) cycle, with such amount to be reduced from the overall amount authorized

by the Commission in its upcoming 2020 GRC decision. This remedy shall be implemented through PG&E's Annual Electric and Gas True-up Advice Letters, or such mechanisms as may be agreed upon by the Parties. The amount above shall be allocated among and within customer classes in accordance with the applicable allocation and ratemaking methodologies then adopted by the Commission.

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

PG&E shall pay:

- \$1,000,000 to the City of San Bruno General Fund.
- \$1,000,000 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 Paragraphs 2.1.A, 2.1.B, 2.1.C, 2.1.D, and 2.1.E or reflected in (a) PG&E's September 2017 Disclosure or (b) the materials PG&E produced in discovery, including those Bates stamped EPOII0000001 - EPOII0011263, and under the unique circumstances of this proceeding.

Non-Financial Remedies

Article II, Paragraph 2.3 provides for the non-financial remedies set forth in the Phase II Settlement Agreement. The non-financial remedies are meant to impose requirements on PG&E independent of the Commission's Rules. The Parties have agreed to extend the time period for the applicability of the non-financial remedies agreed to in Phase I, and have agreed to additional, new non-financial remedies that are tailored to the issues raised by Phase II. The non-financial remedies are as follows:

2.3.A Notice of Tours Provided to CPUC Decisionmakers
(Extension of Phase I Remedy)

Through December 31, 2025, if PG&E gives a tour of its facilities to a Commission decisionmaker,⁴ 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 Public Advocates Office, 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. This is intended as an extension of the remedy agreed to by PG&E in the settlement of Phase I of this OII, as reflected in D.18-04-014 at Ordering Paragraph 1 and the Phase I Settlement Agreement at Paragraph 2.3.A.

2.3.B Notice of Transmittals of Rating Agency and Investor
Analyses to CPUC Decisionmakers (Extension of Phase I Remedy)

Through December 31, 2025, 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 Public Advocates Office, 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. This is intended as an extension of the remedy agreed to by PG&E in the settlement of Phase I of this OII, as reflected in D.18-04-014 at Ordering

⁴ "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the policy or legal advisory staff assigned to a Commissioner's office, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge." (Rule 8.1 of the Commission's Rules of Practice and Procedure).

Paragraph 1 and the Phase I Settlement Agreement at Paragraph 2.3.B.

2.3.C Notice of “Meet and Greet” Meetings Between Certain PG&E Officers and CPUC Decisionmakers (Extension of Phase I Remedy)

Through December 31, 2025, if PG&E Corporation’s Chief Executive Officer, PG&E’s President, PG&E Corporation’s Chief Financial Officer, or its 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 Public Advocates Office 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. This is intended as an extension of the remedy agreed to by PG&E in the settlement of Phase I of this OII, as reflected in D.18-04-014 at Ordering Paragraph 1 and the Phase I Settlement Agreement at Paragraph 2.3.C.

2.3.D Training for PG&E Employees (Extension of Phase I Remedy)

PG&E provides training on the Commission’s *ex parte* communication rules, and through December 31, 2025, 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 (or its successor) employees and Law Department attorneys. PG&E previously provided an initial training within one year of the Commission’s approval of the Phase I Settlement Agreement in this matter. This is intended as an extension of the remedy agreed to by PG&E in the settlement of Phase I of this OII, as reflected in D.18-04-014 at Ordering Paragraph 1 and the Phase I Settlement Agreement at Paragraph 2.3.D.

2.3.E Prohibition on Commission Advocacy Consultants Through 2025

PG&E shall not contract with outside parties for “Advocacy Work” before the Commission through December 31, 2025. “Advocacy Work” as used herein means lobbying on behalf of PG&E directly before the Commission, other than in a public hearing, workshop, or other public forum, which has been noticed to the official service list or on the record of a Commission proceeding. Advocacy Work does not include (a) testimony or participation in a public hearing, workshop, or other public forum, which has been noticed to the official service list or on the record of a Commission proceeding, (b) the provision of technical, advisory, or expert services to support PG&E’s advocacy before the Commission, where the primary purpose of such services is the technical, advisory, or expert services, and not lobbying, or (c) lobbying work before any governmental body other than the Commission.

2.3.F Advocacy Consultant Contracting Requirements From 2026-2030

Commencing in January 1, 2026 and continuing through December 31, 2030, PG&E shall include in all contracts with outside parties for “Advocacy Work,” as defined herein, before the Commission a summary of the Commission’s *ex parte* communication rules, as then in effect, and contractually obligate the outside parties to adhere to these rules. PG&E shall provide the summary of the *ex parte* rules it intends to include in such contracts to the Public Advocates Office, the Safety and Enforcement Division, and The Utility Reform Network before January 1, 2026.

2.3.G Non-Opposition To Request For Advice Letter Rulemaking

PG&E will not oppose a request by any Party to this proceeding for a rulemaking to consider a change to the Commission’s rules that would extend the *ex parte* rules set forth in Article 8 of the Commission’s Rules of Practice and Procedure to cover, as a “ratesetting proceeding,” the advice letter process for

those instances where the process could result in a Commission resolution.

2.3. Impact of Bankruptcy Proceeding

Finally, because of PG&E's pending bankruptcy proceeding, the Phase II Settlement Agreement includes Paragraph 3.8, entitled "Term Relating to PG&E's Bankruptcy Status," and states, in part: "Except as may be otherwise instructed by the Commission and *ordered by the Bankruptcy Court*[" (Italics added.) Because of this inclusion, assigned Administrative Law Judge Robert M. Mason III wrote to the Parties via e-mail dated September 16, 2019, and requested an explanation regarding the Bankruptcy Court's potential involvement if the Commission approved the Phase II Settlement Agreement.

On September 19, 2019, Sean Coyle, counsel for PG&E, responded to the September 16, 2019 e-mail. He states that the Bankruptcy Court must approve the Phase II Settlement Agreement before any monies can be paid as the settlement resolves prepetition claims against PG&E:

... it is appropriate for the Bankruptcy Court to approve the Phase II Settlement Agreement before any monies can be paid. PG&E intends to submit the agreement to the Bankruptcy Court for approval, provided it is first approved by the Commission. We intend to do so because the Settlement Agreement resolves and settles certain prepetition claims asserted against PG&E, which will then be satisfied pursuant to a chapter 11 plan of reorganization approved by the Bankruptcy Court. PG&E cannot satisfy any prepetition claims absent express Bankruptcy Court authority permitting it to do so.

3. Rules Applicable to PG&E *Ex Parte* Communications

The Commission will not repeat the *ex parte* rules (*i.e.* what is an *ex parte* communication, who are decisionmakers and interested persons, what are the *ex parte* restrictions and reporting requirements, and the public purposes served

by compliance with the *ex parte* rules) and their application to the Phase II Settlement Agreement. These rules were discussed extensively in D.18-04-014 and the Commission will, instead, incorporate that discussion herein by reference.

4. 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 also 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.⁵

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

⁵ D.92-12-019; and D.90-08-068, 37.

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.)

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 Parties have presented to the Commission for approval.

4.1. The Phase II Settlement Agreement is Reasonable in Light of the Stipulated Joint Evidentiary Record

4.1.1. PG&E’s Conduct

In reviewing the record, the Commission concurs with the agreements that the Parties have reached regarding the nature and scope of PG&E’s misconduct. This OII has been a contentious and time-consuming proceeding with the 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.

Following the approval of the Phase I Settlement Agreement, the Parties engaged in additional extensive discovery and discussions regarding newly discovered documents to reach an agreement as to what would constitute the

Joint Evidentiary Record for Phase II. This agreed upon document is divided into three sections:

- Section I describes the sources of information from which the documents were obtained;
- Section II consists of factual stipulations that the Parties reached concerning which documents would be included in the Joint Evidentiary Record and which Commission proceedings were implicated; and
- Section III is comprised of the underlying evidentiary materials developed through discovery of PG&E in Phase II, as well as the earlier September 2017 disclosure materials.

From the foregoing recitation, it is clear that a great deal of time has been allocated to identifying the scope of PG&E's misconduct, how the misconduct occurred, and which Commission proceedings were implicated, and it is doubtful that a clearer record could be developed if this matter were to proceed to an evidentiary hearing.

In particular, the Commission is impressed by the fact that the Parties have agreed to stipulations that have resolved all material issues of disputed fact. Through the stipulations, the Parties have agreed on PG&E's communications (identified and grouped at Tabs 1 through 98) and the Commission proceedings to which the communications are related. Some of the proceedings identified in the Joint Evidentiary Record are the same proceedings identified, *supra*, at Section 1 of this decision, with additional Commission proceedings also being identified. The Commission appreciates that a great deal of effort was undertaken, and that compromises were needed to reach a stipulation regarding the identity of the communications and the implicated Commission proceedings.

4.1.2. The Financial Remedies

The Commission agrees that the financial remedies set forth in the Phase II Settlement Agreement are appropriate considering the conduct and information reflected in the Joint Evidentiary Record. \$10 million in penalties and forbearances is a significant amount that reflects the seriousness of PG&E's conduct and the harm it has caused to the Commission, the cities of San Carlos and San Bruno, and to PG&E ratepayers. In addition, this sum is a reflection of the fact that PG&E has previously paid monies for *ex parte* violations arising from the 2010-2014 time period involving many of the same PG&E employees who were trying to influence the outcomes of many of the same Commission proceedings that were covered in the Phase I Settlement Agreement. When we weigh all of these considerations, the Commission concludes that the financial remedies are reasonable in light of the record.

4.1.3. The Non-Financial Remedies

The Commission agrees that the non-financial remedies set forth in the Phase II Settlement Agreement are appropriate considering the conduct and information reflected in the Joint Evidentiary Record. The Parties have agreed to extend the transparency and training remedies adopted in the Phase I Settlement Agreement through 2025, by which PG&E has agreed to:

- Provide notice to Public Advocates Office, SED, and TURN [The Utility Reform Network] regarding tours of PG&E facilities by Commission decisionmakers, transmittals of rating agency or investor analyst reports to a decisionmaker, and planned meetings involving certain senior PG&E officials and Commissioners or their advisors.
- PG&E has also agreed to provide training to its Regulatory Affairs and Law Department personnel.

PG&E has also agreed to additional non-financial remedies as a result of the conduct and issues that comprise Phase II of this proceeding:

- PG&E agrees not to contract with any consultant for “Advocacy Work” (as that term is defined by Paragraph 2.3.E) before the Commission through 2025. After this period and through 2030, PG&E has agreed to include summaries of the Commission’s *ex parte* rules in all contracts for consultants providing PG&E “Advocacy Work” before the Commission.
- PG&E agrees not to oppose a request by any Non-PG&E Party for a Commission rulemaking to apply the *ex parte* rules to certain Advice Letter proceedings (Paragraph 2.3G). The Parties agreed to include this provision because of the communications in the Joint Evidentiary Record that appear to reflect discussions between PG&E and Commission decisionmakers regarding a renewable power purchase agreement Advice Letter filing in 2012.

The Commission agrees that these remedies are substantial and adequate to help prevent a recurrence of the type of conduct from PG&E that is the subject of this proceeding proceedings.

4.2. The Phase II Settlement Agreement is Consistent with Law

The issue of sanctions, or an agreed upon fine or penalty, to be imposed encompasses consideration of Pub. Util. Code § 2107, which sets a \$500 minimum and a \$100,000 maximum fine for each offense, as well as the Commission precedent that has applied this law. In addition, it is incumbent on the Commission to consider the five factors for assessing the size of the fines or penalties that the Commission identified in the Affiliate Rulemaking Decision, D.98-12-075. We discuss each of these authorities below.

4.2.1. Prior Precedent

To assist the Commission in this endeavor, we must look at our precedent in other similar proceedings. As this Commission observed in *Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company*,⁶ “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.⁷

Since then, the fines and penalties have increased. On December 8, 2015, the Commission issued D.15-12-016 (*Decision 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].) And in Phase I of this proceeding, the Commission

⁶ 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].)

⁷ 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 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].)

approved a settlement with penalties and forbearances totaling \$97.5 million. This increase in the fines and settlements is a reflection of the seriousness in which the Commission views *ex parte* violations because of their negative impact on the Commission's goal of fostering transparency in its proceedings.

Compared with similar *ex parte* violations in other proceedings, and in Phase I of this proceeding, it appears that PG&E's agreement to forgo \$6,000,000, to pay \$2,000,000 to the State General Fund, and to pay \$1,000,000 each to the Cities of San Bruno and San Carlos, would be in line with previous settlement ranges. Thus, the Commission concludes that those aspects of the Phase II Settlement Agreement are consistent with the law.

4.2.2. The 98-12-075 Factors

In assessing the amount of a fine or penalty, the Commission focusses on the severity of the offense and the conduct of the utility. These two factors have various additional considerations that we address here because they are also relevant in determine if the settled on fine or penalty is reasonable.

How many days did each violation continue: In this instance, no party has advocated that in calculating the settlement, the number of days a violation occurred must be calculated. Instead, their focus has been on identifying the violations themselves, in which Commission proceedings the violations occurred, and how those violations should be punished and curbed in the future. The Commission agrees with that approach in evaluating the Phase II Settlement Agreement and will not attempt to determine if a daily fine should be imposed in addition to the fines that have been agreed to by the Parties.

What harm was caused by virtue of the violations (This includes harm to the integrity of the regulatory process): There is no question that the *ex parte* violations have harmed the Commission's regulatory process. 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.*) 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 Constitution⁸ and our California Constitution.⁹ Backchannel communications strike at the heart of the Commission's goals of openness and due process. As such, it is appropriate that evidence of *ex parte* violations should warrant a financial penalty which the Phase II Settlement Agreement provides.

What was the utility's conduct in preventing, detecting, correcting, disclosing and rectifying the violation: Once the additional *ex parte* violations came to light, PG&E disclosed them and cooperated by responding to Data Requests and working out a stipulation that became part of the Joint Evidentiary Record. PG&E has also agreed to terms designed to prevent these *ex parte* violations from occurring in the future.

What amount of fine will achieve the objective of deterrence: For the reasons set forth in Sections 4.1.2. and 4.1.3., we believe that the fine and the non-financial remedies will encourage compliance with the Commission's *ex parte* rules in the future.

⁸ U.S. Constitution, Fourteenth Amendment: "No state shall...deprive any person of life, liberty or property without due process of law."

⁹ Cal. Const. Art. I, § 7(a): "A person may not be deprived of life, liberty, or property without due process of law..."

What fine or sanction has the Commission imposed under reasonably comparable factual circumstances: The Commission incorporates by reference, its discussion from Section 4.2.1. of this decision that the fine is comparable to fines imposed under similar circumstances.

The Commission concludes that the Phase II Settlement Agreement satisfies the D.98-12-075 factors for the determining the imposition of a fine or penalty.

4.3. The Phase II 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. The Phase II Settlement Agreement has put an end to years of disputes between the Commission, Commission staff, PG&E, the City of San Bruno, the City of San Carlos, PAO, 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, the result of which is an uncertainty for the Parties. As such, the Phase II Settlement Agreement furthers California's public interest in resolving disputes.

4.4. The Phase II Settlement Agreement has the Unanimous Sponsorship of the Parties

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

4.5. The Sponsoring Parties are Fairly Reflective of the Affected Interests

The Parties to the Phase II Settlement Agreement consist of a utility (PG&E), municipalities (Cities of San Carlos and San Bruno), and public interest

groups (PAO, SED, and TURN). These municipalities and consumer interest groups are advocates for ratepayers and public entities affected by PG&E's conduct, so the positions they have taken in negotiating and executing the Phase II Settlement Agreement would reflect the views of the ratepaying public.

4.6. No Term of the Phase II Settlement Contravenes Statutory Provisions or Prior Commission Decisions

As set forth above, the Commission has found that the Phase II Settlement is in accordance with the standards set forth in Rule 12.4 for approving settlements, and D.98-12-075 in evaluating fines and penalties. The financial component of the Phase II Settlement Agreement is also consistent with Commission precedent. Finally, the non-financial remedies are designed to ensure compliance with the Commission's *ex parte* rules. Thus, the Commission concludes that no term of the Phase II Settlement Agreement contravenes either statutory provisions or Commission precedent.

4.7. The Phase II Settlement Agreement Conveys Sufficient Information to Allow the Commission to Discharge its Regulatory Obligations with Respect to the Parties and Their Interests

The Phase II Settlement Agreement, when combined with the stipulations and Joint Evidentiary Record, has sufficient factual information to allow this Commission to discharge its regulatory obligations. The Parties have detailed

- the steps leading up to the terms of the Phase II Settlement Agreement;
- the factors that the parties weighed in determining the payments;
- the monies PG&E agreed to forgo; and

- the steps PG&E has agreed to implement on a forward 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 Phase II Settlement Agreement meets the criteria set forth in Rule 12.1(d) and in Commission precedent.

5. Waiver of Comment Period

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

6. Assignment of Proceeding

Marybel Batjer is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On November 23, 2015, the Commission instituted this Order Instituting Investigation (OII).
2. On May 3, 2018, the Commission issued D.18-04-014 which granted the Joint Motion to adopt the Phase I Settlement Agreement.
3. The Commission opened Phase II of this proceeding in light of newly discovered communications that PG&E first disclosed in September of 2017.
4. On May 15, 2019, the Parties submitted a proposed evidentiary record entitled the Joint Evidentiary Record.
5. On May 15, 2019, the Parties filed a *Motion to Adopt Joint Evidentiary Record*. This agreed upon document is divided into three sections:
 - Section I describes the sources of information from which the documents were obtained;

- Section II consists of factual stipulations that the Parties reached concerning which documents would be included in the Joint Evidentiary Record and which Commission proceedings were implicated; and
- Section III is comprised of the underlying evidentiary materials developed through discovery of PG&E in Phase II, as well as the earlier September 2017 disclosure materials.

6. On June 28, 2019, the Parties filed their *Joint Motion for Adoption of the Phase II Settlement Agreement*. Under the terms of the Phase II Settlement Agreement, PG&E has agreed to do the following:

- Pay \$2 million to the State of California General Fund;
- Forego collection of \$5,000,000 in revenue requirements during the term of its 2019 Gas Transmission and Storage rate case;
- Forego collection of \$1,000,000 in revenue requirements in its 2020 General Rate Case cycle;
- Pay \$1,000,000 each to the City of San Bruno and City of San Carlos General Funds; and
- The Phase II Settlement Agreement includes a number of non-financial remedies that PG&E has agreed to undertake.

7. The Phase II Settlement Agreement states that before payments can be made, the settlement must be approved by the Bankruptcy Court as the Phase II Settlement Agreement covers prepetition claims.

Conclusions of Law

1. All issues in this proceeding are encompassed by and resolved in the Phase II Settlement Agreement.
2. The Parties to the Phase II Settlement Agreement are all the active parties in this proceeding.
3. The Parties are fairly reflective of the affected interests.

4. No term of the Phase II Settlement agreement contravenes statutory provisions or prior Commission decisions.
5. The Phase II Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.
6. The Phase II Settlement Agreement fully resolves and settles all disputed issues in the OIL.
7. The Phase II Settlement Agreement should be adopted.
8. The Parties' *Motion to Adopt Joint Evidentiary Record* should be granted.

O R D E R

IT IS ORDERED that:

1. The Phase II Settlement Agreement between the City of San Bruno, the City of San Carlos, the Public Advocates Office, the Safety Enforcement Division, The Utility Reform Network, and Pacific Gas and Electric Company (The Parties), is approved. The Parties have agreed that Pacific Gas & Electric Company shall pay \$2 million to the State of California General Fund.
2. Once this decision becomes final, Pacific Gas and Electric Company (PG&E) shall seek approval of the Phase II Settlement Agreement from the judge in the Bankruptcy Court who is overseeing PG&E bankruptcy filings. Within 30 days after the Bankruptcy Court has approved the Phase II Settlement Agreement, PG&E shall make a payment of \$2 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 *Motion to Adopt Joint Evidentiary Record* is granted.
4. Investigation 15-11-015 is closed.

This order is effective today.

Dated December 5, 2019, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners