

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

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 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.

Investigation 12-01-007
(Filed January 12, 2012)

(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.

Investigation 11-02-016
(Filed February 24, 2011)

(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with High Population Density.

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

(Not Consolidated)

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.

Rulemaking 11-02-019
(Filed February 24, 2011)

(Not Consolidated)

**NOTICE IN RESPONSE TO MAY 16 RULING
REGARDING *EX PARTE* REPORTING REQUIREMENTS**

Attached please find a letter on behalf of Morgan Stanley in response to the *Administrative Law Judges' Ruling Granting Motion of the Division of Ratepayer Advocates for Clarification of Ex Parte Reporting Requirements* issued on May 16, 2013 in the above-captioned proceedings.

May 31, 2013

Hon. Amy C. Yip-Kikugawa, ALJ
Hon. Maribeth A. Bushey, ALJ
Hon. Mark S. Wetzell, ALJ
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: CPUC Proceedings: Enforcement proceedings against Pacific Gas and Electric Company, I.11-02-016, I.11-11-009, and I.12-01-007 (collectively, the “San Bruno Investigations”), and R.11-02-019 (“PSEP Rulemaking”)

Your Honors:

We write on behalf of our client, Morgan Stanley, in response to the *Administrative Law Judges’ Ruling Granting Motion of the Division of Ratepayer Advocates for Clarification of Ex Parte Reporting Requirements*, issued May 16, 2013 in the above-referenced proceedings (the “May 16 Ruling”) before the California Public Utilities Commission (“CPUC” or the “Commission”).

Morgan Stanley takes seriously its legal and regulatory responsibilities with respect to the financial research reports that it publishes. We appreciate this opportunity to address the matters in the May 16 Ruling, but note that Morgan Stanley is not a party to these proceedings and does not seek to become a party.

The May 16 Ruling grants a motion by the Division of Ratepayer Advocates (“DRA”) filed two days earlier (the “DRA Motion”) seeking clarification of the Commission’s *ex parte* rules concerning communications between financial industry representatives and Commissioners’ offices. In the DRA Motion, the DRA took care not to assert that any financial industry representative engaged in *ex parte* communications. The DRA Motion sought clarification “to ensure compliance going forward” because the San Bruno Investigations and PSEP Rulemaking involve adjudicatory and ratesetting proceedings.

The May 16 Ruling directs “interested persons” (as that term is defined in the Commission’s Rules of Practice and Procedure (“Commission Rules”)) to file notices of any *ex parte* communications related to these proceedings within ten business days. The May 16 Ruling states that “[i]nterested persons may include representatives of ratings agencies, industry analysts or financial institutions (financial industry representatives) that have financial interests in Pacific

C A D W A L A D E R

California Public Utility Commission

May 31, 2013

Page 2

Gas and Electric Company or PG&E Corporation.”¹ Two of Morgan Stanley’s research analysts, Rajeev Lalwani and Stephen Byrd (the “MS Analysts”), are listed along with individuals from other financial institutions as “financial industry representatives” required to be served with a copy of the May 16 Ruling.²

As an initial matter, Morgan Stanley does not believe that the MS Analysts constitute “interested persons” for purposes of these proceedings, or that the May 16 Ruling makes such a factual determination. Morgan Stanley views the May 16 Ruling as allowing that this characterization *may* apply. Importantly, review of the research reports cited by DRA’s motion shows that the MS Analysts certify that they “have not received and will not receive direct or indirect compensation in exchange for expressing specific recommendations or views” in their reports.

The MS Analysts’ reports do disclose that Morgan Stanley & Co. International PLC and its affiliates have financial interests in the debt securities of PG&E Corp. As the reports attest, however, these interests cannot be attributed to the MS Analysts because the MS Analysts operate under strict policies and procedures regulating communications between Morgan Stanley research and non-research personnel.³ These policies require physical separation between investment banking and research personnel, and restrict any coordination between investment banking and research analysts about any investments. Investment banking and other non-research personnel are also prohibited from attempting to influence the timing or content of an analyst’s research report, and research analysts are prohibited from disclosing the timing or content of a research report to any other business area within Morgan Stanley.

Even allowing *arguendo* that the MS Analysts are “interested person,” as that term is defined in Rule 8.1 and set out in the May 16 Ruling, discussions between the MS Analysts and any decisionmakers (or personal advisors to Commissioners) would not comprise *ex parte* communications. The Commission has explained that the *ex parte* rules apply to the parties communicating with a decisionmaker and not to the decisionmaker (or personal advisor to a Commissioner).⁴ The *ex parte* reporting obligations support this view—specifically section

¹ *May 16 Ruling* at Ordering Paragraph 5.

² *Id.* at Ordering Paragraph 6.

³ Morgan Stanley & Co. LLC is party to the equity research settlement with U.S. federal and state regulators of April 2003 (the “Research Settlement”), and Morgan Stanley policies are designed to comply with the Research Settlement, as well as SEC, FINRA and other applicable research regulations. Additionally, with respect to Fixed Income Research, Morgan Stanley policies are designed to comply with the Guiding Principles to Promote the Integrity of Fixed Income Research published by The Bond Market Association, Morgan Stanley’s policies are also designed to comply with the Commodities Futures Trading Commission’s Research Conflict of Interest Rules that apply to derivatives research.

⁴ CPUC Decision 08-06-02 at pp. 23-24 (issued June 13, 2008).

C A D W A L A D E R

California Public Utility Commission

May 31, 2013

Page 3

8.4(c), which requires disclosure of only “the interested person’s, but not the decisionmaker’s (or Commissioner’s personal advisor’s) communication and its content.”

Any communications by the MS Analysts to decisionmakers (or Commission advisors) were in the nature of open-ended questions seeking only to gather information for inclusion in published research reports made available to clients of Morgan Stanley. Those communications were as follows:

- ffi On May 6, 2013, MS Analyst Rajeev Lalwani had a brief telephonic communication with Carol Brown (Chief of Staff to President Michael R. Peevey), during which call Mr. Lalwani asked Ms. Brown for general information about regulatory policies and priorities with regard to the penalties recommended by the Consumer Protection and Safety Division related to the San Bruno Investigations.
- ffi On September 26, 2012, MS Analysts Stephen Byrd and Rajeev Lalwani met in person with certain decisionmakers and Commissioner advisors. Present during such communications were: Carol Brown, Chief of Staff to President Peevey; Paul Clanon, Executive Director to President Peevey; Phyllis White, Chief of Staff to Commissioner Simon; Rahmon Momoh, Advisor to Commissioner Simon; Commissioner Mark Ferron; Commissioner Michel Florio; Matthew Tisdal, Advisor to Commissioner Florio; Sepideh Khosrowjah, Advisor to Commissioner Florio; Colette Kersten, Advisor to Commissioner Sandoval; Stephen St. Marie, Advisor to Commissioner Sandoval; William Johnston, Advisor to Commissioner Sandoval; and representatives of Morgan Stanley clients. During these meetings, such communications entailed only general, open-ended questions about a wide range of regulatory issues including potential timing for the resolution of the San Bruno Investigations.

In contrast, the *ex parte* rules address situations where parties address substantive issues in a formal proceeding seeking some form of relief or advocating for a particular outcome (*e.g.*, the appropriate forum for dealing with their regulatory obligations and the substance of complaints against them).⁵ As shown above, these communications did not advocate for a particular party, position or result; nor did they seek relief of any sort, or describe what the MS Analysts believed would be potential “outcomes” or “impacts” resulting from decisions about substantive issues in these proceedings. They merely asked questions of a general nature. Under these circumstances, Morgan Stanley does not believe that any *ex parte* communications took place.

⁵ CPUC Decision 07-07-020 (issued July 12, 2007), (Joint Statement of Concurrence Commissioners Bohn and Chong) (July 27, 2007).

C A D W A L A D E R

California Public Utility Commission

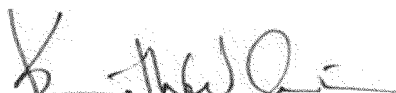
May 31, 2013

Page 4

We trust that this provides the information necessary to address the May 16 Ruling. Morgan Stanley reserves all rights with respect to the matters herein.

If we may be of further assistance, please do not hesitate to contact me directly.

Respectfully,



Kenneth W. Irvin

cc: Parties on the attached service list
Morgan Stanley
Ian Mahoney, Esq.
Denise McCool, Esq.