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Cc:
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Subject: FW: in today's SF Chronicle

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PUC lawyers call official's orders 'threatening'

PUC official Frank Lindh reassigned the entire PUC legal team after a confrontation.

By Jaxon Van Derbeken

June 25, 2013

The top California Public Utilities Commission official who recommended that Pacific Gas and Electric Co. not be fined for the 2010 San Bruno disaster dismissively told agency attorneys who objected that "fairies" were supplying him with the information he needed, and that the lawyers should back him up "or else," according to confidential e-mails obtained by The Chronicle.

One attorney wrote that the PUC official, Jack Hagan, is known to carry a concealed gun and a knife in the state agency's San Francisco office, and that he felt threatened by the exchange.

The e-mails were sent to the utilities commission's lead counsel by attorneys who had spent 2 1/2 years building a case that PG&E should be fined for regulatory violations in connection with the explosion of a natural-gas pipeline that killed eight people and destroyed 38 homes in San Bruno's Crestmoor neighborhood on Sept. 9, 2010.

The attorneys were overruled by Hagan, the head of the PUC's safety division, a newcomer to the regulatory agency who told a pair of administrative law judges that the money PG&E's shareholders are spending to improve the gas system would be penalty enough.

Lawyers reassigned

Soon after a May 31 confrontation with Hagan, the entire PUC legal team was reassigned by its boss, Frank Lindh, a former legal counsel for PG&E.

Before being reassigned, two of the attorneys - Patrick Berdge and Harvey Morris, who headed the legal team on the PG&E case - described the confrontation with Hagan in e-mails to Lindh. The Chronicle obtained the e-mails Monday from a third party; the attorneys have declined to comment on the dispute.

The PUC lawyers had already refused to sign an argument that Hagan submitted to the administrative law judges in which he said fining PG&E "makes no sense." Hagan said the judges should recommend to the gubernatorial-appointed members of the PUC that they count the \$2.25 billion the utility says it is spending on its gas system as PG&E's penalty.

Office confrontation

According to the e-mail accounts, the confrontation with Hagan happened when the PUC safety division chief presented Morris with a list of PG&E expenses he wanted to include in the \$2.25 billion total.

When Morris pressed Hagan about who had compiled the list, Hagan replied, "Some fairies ... I don't have to tell you. Just include the items or else," Berdge wrote.

"Or else what?" both lawyers asked. "Do it or I'll get another attorney," Hagan said in a "very threatening" tone, Berdge wrote.

Morris told Lindh in a separate e-mail that some PG&E spending was unrelated to gas safety issues raised in the San Bruno case, and that Hagan "thought he could just order us to do something without giving us a reason or basis for doing it."

Berdge said the encounter was threatening.

"This angry demeanor, and the slamming of Harvey's door on his way out, must be placed in the context of (Hagan's) past habit of carrying a concealed gun and knife on his person while at the commission," Berdge wrote in his e-mail to Lindh.

Berdge concluded that the clash left "no working or salvageable attorney-client relationship."

Attorney 'horrified'

Another PUC attorney, Robert Cagen, told Lindh in an e-mail that he was "horrified" by the exchange, and that unless the commission took action, "I don't have any intention to be in the same room as Hagan, regardless of whether he is unarmed at the time."

Hagan spent 20 years in the Marine Corps before joining state government. In an online biography, he identifies himself a brigadier general in the California State Military Reserve, a volunteer force that the governor can activate in an emergency when the National Guard is deployed, and as a former "special agent" with the state Department of Justice. He was hired as the PUC's safety-division chief last year.

It is not clear whether the commission has rules against its officials carrying guns, or whether Hagan has brought concealed weapons onto agency property. Neither Hagan, Lindh nor other commission representatives returned phone calls Monday seeking comment.

Commission in disarray

The attorneys' e-mails are a window on the disarray that has engulfed the utilities commission over a possible PG&E fine.

Lindh, who had recused himself from the matter because of his past ties to the utility, said in a statement earlier this month that some of the PUC attorneys on the PG&E case had asked to be reassigned. Morris responded in an e-mail, leaked by a third party, demanding that his boss stop

making "defamatory representations that I and the other attorneys in the San Bruno (matter) voluntarily left the case."

Berdge wrote in his e-mail that Hagan was presenting "falsehoods," including a contention that \$500 million that PG&E is paying to relocate gas lines encroaching on private property was part of its San Bruno-related costs. The utilities commission has already said such spending was separate from the San Bruno case, and that counting "these fanciful costs" as part of a PG&E penalty would be "a fraud," Berdge wrote.

Settling for 'pittance'

Another PUC attorney, Travis Foss - the only lawyer who has said he volunteered to leave the case - wrote in an e-mail to Lindh that Hagan wanted to take a "case worth billions of dollars" and then "sell out for a pittance."

"The people are the ultimate client here, not director Hagan," Foss wrote. "He is taking a position that is antithetical to the public interest, and directly beneficial to PG&E."

Morris echoed that criticism, saying Hagan "is making decisions as the 'client' whose knowledge (I suspect from various coincidences) comes mostly from PG&E and who therefore has no knowledge of the strength of the case."

Morris added, "He has also not shown any concern for the victims in San Bruno, who demand justice for PG&E's decades of mismanagement" that led to the explosion.

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