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's Natural Gas Transmission Pipeline System in Locations with Higher Population Density	I.11-11-009 (Filed November 10, 2011)

PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO MOTION OF THE CITY OF SAN BRUNO FOR AN ORDER TO SHOW CAUSE, ETC.

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San Bruno's motion misrepresents both the facts and the law. PG&E has not settled or "attempted to settle" this OII by responding to the citation issued by SED. Nor does the fact that Res. ALJ-274 delegated citation authority to SED render SED's staff "decisionmakers" for purposes of the *ex parte* rules.

The facts are as follows. In February 2012, SED conducted a GO 112-E audit of PG&E's operations, maintenance and emergency plans. As a result of that audit, SED concluded that PG&E violated GO 112 from 1971 through 2012 by not having a specific, unifying procedure for Continuing Surveillance. SB Mot., Ex. A. Based on that conclusion, on December 5, 2013, SED served PG&E with a citation for violations assessing a $375,000 penalty. This was the first PG&E learned of SED's citation and proposed penalty. The citation represented SED's investigation and conclusions, as set forth in the citation itself. The citation form also outlined PG&E's response options: within 10 calendar days PG&E may either 1) correct the violation **and** pay the fine; **or** 2) correct the violation **and** submit the Notice of Appeal Form included in the citation. *Id.*, (emphases in original). Consistent with that procedure, PG&E did not appeal the citation. PG&E did not discuss the citation with SED. When it paid the $375,000 penalty SED assessed, PG&E pointed out the overlap between the citation and this pending OII, concluding with the statement: "Given the substantial o verlap between the subject matter of the Citation and the subject matter of the Class Location OII, PG&E respectfully urges the Commission to take into account PG&E's $375,000 payment submitted today in connection with

assessment of any subsequent penalty in the Class Location OII." *Id.*, Ex. C.

Nothing in PG&E's payment of the assessed penalty or its statement about that payment constitutes a settlement, an attempt to settle, or an "accord and satisfaction" [1] of anything, let alone this OII. There is no "backroom deal," as claimed by San Bruno. San Bruno's claim that "PG&E and the CPUC were essentially settling the HCA OII" (SB Mot. at 6) is a misrepresentation lacking any factual foundation.

San Bruno catapults from the false assertion that there was a "settlement" of this OII, to accuse PG&E and at least one member of the SED staff of violating the Commission's *ex parte* rules, saying:

> Not only is the participation of PG&E in an attempted settlement of the FCA OIIs [sic] improper and inappropriate, the participation of PG&E and decisionmakers is a violation of the law. The participation of PG&E and decisionmakers in the HCA OII on subjects germane to the HCA OII amounts to a prohibited *ex parte* communication under Commission rules.

SB Mot. at 9 (emphasis added).

However, under the Commission's *ex parte* rules, "decisionmaker" is defined as follows:

> "Decisionmaker" means any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.

Rules Prac. & Proc., Rule 8.1(b).

The only purported "decisionmaker" San Bruno identifies is the Deputy Director of SED. SB Mot. at 9. The Deputy Director is not a Commissioner or any type of ALJ, and thus falls outside the scope of the Commission's rules. Nevertheless, without acknowledging that it is urging a position that is expressly contradicted by the rules, San Bruno argues that "under the ALJ 274 citation procedures and protocol, [the Deputy Director] has decision-making authority." *Id.* This statement is false.

The authority delegated to SED by Res. ALJ -274 is to cite a utility for an alleged safety violation with discretion to propose the specific penalty for the alleged violation. It is a misrepresentation of the Commission's rules and the English language to call the person issuing

[1] "Accord and satisfaction" is a contract concept having no application to this enforcement proceeding. *See* http://www.law.cornell.edu/wex/accord_and_satisfaction

the citation a "decisionmaker." If a utility does not contest the citation, it pays the fine. If a utility contests the citation, the Commission decides wh ether there was a violation and, if so, the appropriate penalty. Indeed, Res. ALJ -274 explicitly treats SED Staff as a "party" and enumerates the specific "decisionmakers" with whom parties shall not communicate during an appeal:

> During the period [of ap peal], none of the following may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner's advisor, Chief ALJ, Assistant Chief ALJ, or assigned ALJ: the Respondent, the Staff that issued or is enforcing the citation, or an y agent or other person on behalf of the Respondent or such Staff.

Res. ALJ-274, App. A, §II.L.

Stripped of its misrepresentations of fact and law, San Bruno's motion has no substance. San Bruno's attorneys should have considered their own obligations un der Rule 1.1 before filing such a frivolous motion.[2] The motion should be denied.

Respectfully submitted,

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[2] San Bruno's motion appears to be a thinly veiled excuse to repeat the recommendation it made in its closing brief that the Commission appoint a monitor over PG&E's gas operations and to further i ts publicity campaign against PG&E.