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Date of Issuance
April 25, 2012

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 Regarding Anti-Smart Meter Consumer Groups.	**FILED** **PUBLIC UTILITIES COMMISSION** **APRIL 19, 2012** **I. 12-04-010**

ORDER INSTITUTING INVESTIGATION; NOTICE OF OPPORTUNITY FOR HEARING; AND ORDER TO SHOW CAUSE WHY THE COMMISSION SHOULD NOT IMPOSE APPROPRIATE FINES AND SANCTIONS

I. INTRODUCTION

By this order, the Commission institutes an investigation to determine whether Respondent, Pacific Gas and Electric Company (PG&E), violated Public Utilities Code (PU Code) Section 451 or any provision of the PU Code, Commission orders, or other applicable laws or rules when PG&E and its employees took certain actions during PG&E's smart meter rollout. The Commission orders PG&E to show cause why it should not be subject to penalties if it is found to be in violation of California law, Commission rules, or any other applicable rule.

This order provides notice that the Assigned Commissioner and/or assigned Administrative Law Judge (ALJ) will set a hearing to determine whether PG&E has violated PU Code Section 451 or other applicable authority pertaining to PG&E's actions. This order also directs PG&E to identify any portions of the Consumer Protection and Safety Division (CPSD) Staff Report that it believes should remain unavailable for public review, and to do so by filing a written motion for a protective order which identifies the specific portions of the report and/or attachments to be considered confidential and identifies the legal support for its request.

AGENDA ITEM # L

II. BACKGROUND

In early November 2010, several news media sources reported that a senior director of PG&E's SmartMeter Program, William Devereaux, admitted to anonymously joining a couple of anti-smart meter consumer advocacy groups.

CPSD conducted an investigation into the activities of Mr. Devereaux. CPSD's Report describes Mr. Devereaux as the public face of PG&E's SmartMeter Program from October 2009 through October 2010.[1] Mr. Devereaux resigned from PG&E in November 2010. Based on evidence gathered during its investigation, CPSD concluded that:

1. PG&E violated PU Code Section 451 by failing to furnish just and reasonable service when Mr. Devereaux lied about his identity to infiltrate online smart meter discussion groups in order to spy on their activities and discredit their views; and
2. PG&E senior management knew of Mr. Devereaux's deceit before it was reported in the press and failed to prevent and stop his inappropriate behavior.

PG&E conducted its own internal investigation into Mr. Devereaux's activities beginning November 9, 2010 and concluding on December 17, 2010. Based on the evidence gathered from Mr. Devereaux's PG&E-issued laptop and his internet searches, PG&E concluded that:

1. Mr. Devereaux violated PG&E's Employee Code of Conduct as well as the Company's Core Values and the Expectations of our Leaders;
2. Mr. Devereaux was actively involved in intelligence gathering and he performed this task using a false identity; and

[1] Public Appearances of William Devereaux Relating to the SmartMeter™ Program, PG&E December 10, 2010, response to DR1 question # 19, Attachment CPSD_001-19-1, page 1 of 1. **(CPSD Staff Report, Attachment 2.)**

3. Mr. Devereaux provided inappropriate comments and opinions on at least four occasions while using a false identity.[2]

III. PG&E FAILED TO COMPLY WITH PUBLIC UTILITES CODE SECTION 451

A. Public Utilities Code Section 451

All services provided by a utility to its ratepayers must be just and reasonable. Public Utilities Code Section 451 states:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished <u>or any service rendered or to be rendered shall be just and reasonable</u>. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. (Emphasis added.)

Public utilities have a duty to provide just and reasonable service which includes the duty to provide complete and truthful information to their customers. By lying to and infiltrating anti-smart meter consumer groups, Mr. Devereaux, acting on behalf of PG&E, violated PG&E's obligation to provide just and reasonable service to its customers.

CPSD's Report describes Mr. Devereaux's attempts to join, monitor, and influence four online anti-smart meter consumer groups, Stopsmartmeters.org, Onthelevelblog.com, SmartWarriorMarin Google Group, and the EMF Safety Coalition Google group.[3] The CPSD Report states that Mr. Devereaux used a false name and a non-PG&E email address in order to join these organizations without identifying himself as an employee of PG&E.[4] The CPSD Report details five occasions when Mr.

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[2] PG&E response to DR1, December 10, 2010, Attachment CPSD_001-01Supp01-1, page 2. **(CPSD Staff Report, Attachment 6.)**

[3] See e-mail from Josh Hart to CPSD staff, December 30, 2010, 11:20 AM, page 4. **(CPSD Staff Report, Attachment 7)** and PG&E January 10, 2011, supplement to CPSD data request, Attachment CPSD_001-08Supp01-1, page 1 of 2. **(CPSD Staff Report, Attachment 15.)**

[4] See e-mail from Josh Hart to CPSD staff, December 30, 2010, 11:20 AM, page 4. **(CPSD Staff Report, Attachment 7.)**

Devereaux used his false identity to monitor and send inappropriate messages to the consumer groups.[5] CPSD's Report also references PG&E's own investigation into the matter and specifically PG&E's conclusion that Mr. Devereaux was involved in intelligence gathering, using a false identity, and that he had made inappropriate comments to consumer groups.[6]

B. Public Utilities Code Section 2109

Public Utilities Code Section 2109 states:

> [. . .] the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public utility.

Mr. Devereaux's actions toward anti-smart meter groups were within the scope of his employment. Mr. Devereaux's communications with anti-smart meter groups were directly related to Mr. Devereaux's role as the public face of PG&E's SmartMeter Program. Further, CPSD's Report alleges that PG&E's senior management was aware of Mr. Devereaux's activities.[7] The Report references six occasions when Mr. Devereaux forwarded emails he had collected from the online anti-smart meter consumer groups using his false identity.[8] Between September and November 2010 Mr. Devereaux forwarded those emails to his boss and other senior managers at PG&E including a member of the legal department.[9]

PG&E's senior management's failure to act leads us to believe that they either condoned or approved of Mr. Devereaux's behavior. When PG&E management finally did take action, it was only after Mr. Devereaux's deceitful acts were exposed by the media. Only after the moderator of a discussion group discovered Mr. Devereaux's

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[5] See CPSD Staff Report, Pages 5 -8. **(CPSD Staff Report Attachments 7,9,10, and 15.)**

[6] PG&E response to DR1, December 10, 2010, Attachment CPSD_001-01Supp01-1, page 2. **(CPSD Staff Report, Attachment 6.)**

[7] See CPSD Staff Report, Table 2, page 8.

[8] CPSD Staff Report, Table 2, page 8 – 9.

[9] CPSD Staff Report, Table 2, page 9.

deceit and only after the entire matter was made known to the public, did PG&E take actions to stop Mr. Devereaux's activities.

Therefore, pursuant to PU Code Section 2109, Mr. Devereaux's actions are considered the actions of PG&E.

C. Conclusion

PG&E lost the public's trust when Mr. Devereaux was caught using a false identity to join the EMF Safety Network. CPSD believes that PG&E, based on Mr. Devereaux's actions and the failure of senior management to detect and stop his behavior, failed to provide just and reasonable service to its customers and as such violated PU Code Section 451.

The allegations in CPSD's Report provide a sufficient record to initiate this investigation into the actions of PG&E and its employees. Based on CPSD's investigation and Report, it appears that PG&E failed to provide just and reasonable service as required by PU Code Section 451. CPSD alleges that PG&E engaged in deceitful conduct towards its customers in anti-smart meter groups when Mr. Devereaux infiltrated these groups and lied to them about his identity. We consider truthful conduct toward customers to be an essential element of just and reasonable service.

This proceeding shall seek to:

(1) determine whether PG&E violated any provision of the PU Code, general orders, other rules, or requirements as a result of the improper activities of William Devereaux or any other PG&E representative regarding anti-smart meter consumer groups;

(2) determine whether PG&E management was aware of Mr. Devereaux's activities;

(3) determine the extent of Mr. Devereaux's improper activities regarding anti-smart meter consumer groups:

(4) determine whether fines and/or other remedial actions should be imposed on PG&E.

IV. SCHEDULE

The Assigned Commissioner and/or the Assigned ALJ will set a prehearing conference to scope the issues, adopt a hearing schedule, and consider other matters.

V. CATEGORIZATION

Rule 7.1(c) of the Commission's Rules specifies that an Order Instituting Investigation (OII) will preliminarily determine the category of the proceeding and the need for hearing. We determine that this proceeding is adjudicatory as defined in Rule 1.3(a), and evidentiary hearings may be necessary. Pursuant to Rule 8.2(b) *ex parte* communications are prohibited. The determination as to category is appealable under Rule 7.6 of the Commission's Rules of Practice and Procedure.

Therefore, **IT IS ORDERED** that:

1. An investigation is instituted on the Commission's own motion to determine whether PG&E violated any provision of the California PU Code, general orders, or any other rules, or requirements by engaging in deceitful conduct towards anti-smart meter consumer groups.

2. Respondent PG&E is directed to show at hearings why the Commission should not find it in violation of provisions of the PU Code, general orders, decisions, other rules, or requirements identified in this Order, and/or engaging in unreasonable and/or imprudent practices related to these matters, and why the Commission should not impose penalties. If any PG&E violation is found, PG&E is directed to show why penalties and/or any other form of relief should not be applied.

3. PG&E is hereby given notice that fines may be imposed in this matter pursuant to PU Code Sections 2107 and 2108.

4. PG&E is named as Respondent to this investigation.

5. CPSD is named as a party to this investigation.

6. Pursuant to Rule 7.1(c) of the Commission's Rules of Practice and Procedure, this proceeding is categorized as adjudicatory, deemed to require hearings.

Pursuant to Rule 8.2(b) *ex parte* communications are prohibited. This Order, only as to category, is appealable under Rule 7.6.

7. The scope of the issues in this proceeding is preliminarily determined to be whether PG&E violated provisions of the PU Code, general orders, decisions, other rules, or requirements identified in this Order, and/or engaging in unreasonable and/or imprudent practices related to these matters, and why the Commission should not impose penalties. This ordering paragraph suffices for the "preliminary scoping memo" required by Rule 7.1(c).

8. A prehearing conference shall be convened before an Administrative Law Judge (ALJ) for the purpose of establishing a schedule in this matter, including the date, time, and location of an evidentiary hearing.

9. The report and supporting documents prepared or attached by CPSD will be entered into the record for this proceeding. If PG&E believes that under the law any portion of the report or attachments, not already public, should remain unavailable for public review, PG&E must file a written motion for a protective order for specific identified portions of the report and attachments, and must identify the legal support for its requests, no later than May 21, 2012. CPSD is directed to provide any reply to this request no later than May 28, 2012.

10. The Executive Director shall cause a copy of this Order and CPSD Staff Report to be served by certified mail, on Respondent, PG&E, at:

Pacific Gas and Electric Company
77 Beale Street, #100
San Francisco, CA 94105
Attention: Agent for Service of Process

Christopher P. Johns
President
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77 Beale Street
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Lise H. Jordan
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Brian K Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
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San Francisco, CA 94105

This order is effective today.

Dated April 19, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners