



## II. Summary of Facts

The facts of this case are more particularly set forth in the Motion, the OII and the Consumer Protection Safety Division (CPSD) staff report submitted with the OII (Staff Report). However, important to these comments, in late 2010 the head of PG&E's SmartMeter Program, William Devereaux, other PG&E employees and third parties hid their true identities and purpose and used non-work related email addresses to infiltrate anti-SmartMeter online discussion lists. For example, Mr. Devereaux used the alias Ralph Florea and email address manasota99@gmail.com when interacting with anti-SmartMeter activists.

This infiltration was part of an on-going surveillance program of these groups conducted by PG&E and Edelman, a public relations firm PG&E hired in January of 2010 in response to escalating Smart Meter complaints and problems. They established objectives to educate customers and elected officials about the "benefits" of Smart Meters and to "change the tone of the discussion around Smart Meter devices to be more balanced and increase PG&E's share of voice, moving toward more positive coverage".<sup>1</sup>

As part of this program, Mr. Devereaux, other PG&E employees and third parties spied on groups with the knowledge of senior PG&E staff.<sup>2</sup> PG&E employees, and senior management exchanged emails insulting and demeaning the members of the anti-SmartMeter activist groups. For example, activists were referred to "insurgents."<sup>3</sup> PG&E coordinated moving an entire Smart Meter deployment yard to derail a non violent protest and sent an employee to surreptitiously observe and report on the reactions of the protestors, who also transmitted pictures of them to PG&E. This "spy" expressed his pleasure in observing and taking photos of anti-SmartMeter activists.<sup>4</sup>

PG&E did not voluntarily end this program. Rather, it did so only after Network's moderator, Sandi Maurer, discovered Mr. Devereaux's identity after responding to "Ralph's" request to join Network's private email list, The California EMF Safety Coalition, which could

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<sup>1</sup> CPSD redacted investigation documents pdf 50 p. 20 of 410 PG&E hired Edelman January 2010. While Network signed the Nondisclosure Agreement in this proceeding, all citations are to the publicly available redacted version of all documents in this case.

<sup>2</sup> On p.169 of 309 of CPSD's redacted investigation documents Edelman sent PG&E senior staff and employees online data harvested from EMF Safety Network and other websites; see Staff Report, pp. 8-9.

<sup>3</sup> See e.g., Staff Report, Attachment 20.

<sup>4</sup> PG&E response to DR1, December 10, 2010, Attachment CPSD\_001-13-1, p. 270 of 309.

only be accessed with moderator approval.<sup>5</sup> Specifically, Mr. Devereaux's name was included on the header of Ralph's email.<sup>6</sup> As Ms. Maurer was involved in SmartMeter issues; had filed Application A.10-04-018, which was an open proceeding before the Commission; had met and talked with him at a public forum in Sebastopol; she recognized Mr. Devereaux's name and his association with PG&E.<sup>7</sup>

After Mr. Devereaux's improper activities were exposed, media outlets reported on the spying after PG&E sent redacted investigation documents that they provided to CPSD regarding the matter.<sup>8</sup> PG&E only redacted PG&E and third party information, but did not redact private information of anti-SmartMeter activists, including names, email addresses and telephone numbers.<sup>9</sup> The vast majority of, if not all, activists identified in the documents reside within PG&E's service area, and are presumably PG&E customers.<sup>10</sup>

### **III. Standard of Review**

Under RPP 12.1(d), "the Commission will not approve settlements, whether contested or uncontested, unless settlement is reasonable in light of the whole record, consistent with law, and in the public interest." Prior to filing a settlement motion, the settling parties must conduct at least one settlement conference with seven-day advance notice to all parties.<sup>11</sup>

Based on RPP 12.1(d), a contested settlement must meet a three-factor test: (1) it must be reasonable in light of the whole record, (2) consistent with law and (3) in the public interest. For the reasons discussed below, the Motion fails to meet the first and third factors. For the third, the settlement is not in the public interest as it would preclude Network and the other non-settling parties from submitting testimony and conducting an evidentiary hearing in this case. There is substantial circumstantial evidence in this case that senior PG&E management and employees were aware of Mr. Devereaux's activities.<sup>12</sup> Network believes that an opportunity to submit testimony and have an evidentiary hearing would allow it present this evidence, under seal if

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<sup>5</sup> Staff Report, p.p. 5-7; Declaration of Sandra Maurer, ¶ 2.

<sup>6</sup> *Ibid.*

<sup>7</sup> Maurer Decl., ¶ 3.

<sup>8</sup> Staff Report, Attachment 1. PG&E provided redacted documents (102 pdfs of 21 questions from CPSD and prepared responses by PG&E for the initial investigation on Dec.10, 2010) to San Jose Mercury News, who provided the information by email to Network on Dec.13, 2010.

<sup>9</sup> See e.g., PG&E response to DR1, December 10, 2010, Attachment CPSD\_001-13-1, p. 144 of 309.

<sup>10</sup> Maurer Decl., ¶ 4.

<sup>11</sup> Network does not contend that the Motion is procedurally improper.

<sup>12</sup> Maurer Decl., ¶ 5.

appropriate,<sup>13</sup> and potentially lead to the discovery of clear evidence of senior PG&E involvement and/or knowledge through cross-examining PG&E's sponsoring witnesses. For the first, the settlement is not reasonable in light of the whole record. The \$390,000 payment and other non-monetary concessions that PG&E has agreed to are disproportionate to the amount of fine that would likely be imposed by the Commission in this case.

#### **IV. The Settlement is Not in the Public Interest as it Precludes an Evidentiary Hearing**

The proposed settlement is not in the public interest as it would preclude Network and the other non-settling parties from conducting an evidentiary hearing. This hearing would allow Network and the other parties to refute PG&E's assertion that PG&E's senior management were unaware of Mr. Devereaux's activities and he was not simply a "rogue" employee. In addition, this hearing would likely lead to the discovery of direct evidence of senior PG&E involvement through the cross-examination of PG&E witnesses.

While the Commission has recognized a public interest in settling cases to avoid litigation expenses and mitigating the risk to parties of an unacceptable result, this interest is lessened when a case is prematurely settled by the parties for a modest fine amount. (See generally *Investigation into the Operations and Practices of Qwest Communications Corporation*, D.06-10-027, 2006 Cal. PUC LEXIS 402, \*45.) For example, one of the reasons that the Commission approved a settlement not joined by all parties in the *Qwest* proceeding was because the non-settling party wanted to dramatically expand the scope of the matter, likely requiring years to resolve. Network is not proposing such an expansion.

Here, the public interest in avoiding litigation expenses and mitigating the risk of an unacceptable result does not override the public interest in conducting an evidentiary hearing to permit Network and the other settling parties to present the overwhelming circumstantial evidence of senior PG&E involvement in the case. In addition, while Network recognizes CPSD and The Utility Reform Network (TURN) may interpret differently the evidence produced so far, evidentiary hearings would likely result in the discovery of direct evidence of senior PG&E involvement and violations of PUC section 451 and possibly other laws. Lastly, unlike *Qwest*, an evidentiary hearing would not expand the scope of the proceeding or otherwise unnecessarily delay its resolution.

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<sup>13</sup> Again, while Network has drafted these comments to avoid copying or disclosing any confidential information, it will support its view of the case with appropriate documentation in compliance with the Nondisclosure Agreement.

## **V. The Settlement is Unreasonable in Light of the Whole Record**

The proposed settlement is not reasonable in light of the whole record as the proposed fine is disproportionate to the fine that would likely be imposed by the Commission in this proceeding. When determining whether or not a settlement is reasonable, the Commission has noted that “[t]he most important element in determining the fairness of a settlement is the relationship of the amount agreed upon to the risk of obtaining the desired result.” (See *In the Matter of the Application of Pacific Bell*, D.92-07-076, 45 CPUC2d 158 at \*22-23 [citing 30 CPUC2d 189, 267.]

Here, CPSD has alleged that PG&E through the activities of Mr. Devereaux has violated Public Utilities Code section 451. (See Pub. Util. Code, § 2109.) Each of the emails (i.e., from Mr. Devereaux to each recipient) is a violation of section 451. (Pub. Util. Code, § 2108.) Based on the version of Public Utilities Code section 2107 in effect at the time at issue in this proceeding, each of these violations was subject to a range of fines from \$500 to \$20,000. (See Stats. 1993, ch 222, § 1 (SB 485).)

Therefore, at its simplest level, the \$390,000 fine assumes between 780 and 19.5 violations. Assuming a \$10,000 per violation fine, the settlement assumes 39 violations. Admittedly, these ranges do not account for the probability of the Commission finding a violation or the risk of obtaining the desired outcome.

However, even allowing for some discounting due to the probability of an adverse outcome, the \$390,000 fine is disproportionate to the expected fine and unreasonable. There are at least 471 violations committed by Mr. Devereaux alone in this case.<sup>14</sup> This does not account for others who were also monitoring and obtaining anti-SmartMeters discussion list emails. For the actions uncovered so far, these violations would result in a range of fines between \$235,000 and \$9,420,000. At a \$10,000 fine level, the expected fine is at least \$4,710,000. Even accounting for some discounting, a \$390,000 fine is unreasonable in light of these expected outcomes.

## **VII. In the Alternative, Network Requests Modifications to the Settlement**

In the alternative, if the Commission decides to approve the basic settlement framework, Network requests modifications to certain portions of the settlement. Specifically, section 1.10

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<sup>14</sup> Maurer Decl., ¶ 5.

of the settlement is ambiguous. In part, it states, “PG&E further acknowledges his conduct was misleading and that those actions were wrong and in violation of PG&E internal ....” It is unclear exactly which “activities” PG&E acknowledges were wrong. Further explanation should be provided.

Network also feels strongly that PG&E should not elevate itself to being a social media expert and teaching others like NARUC about social media policy. This is an unacceptable remedy.

In addition, Network believes that PG&E should be required to publicly acknowledge and apologize to Network and the other victims in this case. While PG&E maintains that Mr. Devereaux’s conduct was not a violation of the Public Utilities Code, it has acknowledged that his actions were wrong. As such, the settlement should at the very least include a public acknowledgment of these wrongful acts and public apology to Network and the other victims.

### **VIII. Conclusion**

For the reasons discussed above, Network requests that the Commission reject the proposed settlement. Specifically, Network alleges the following contested issues of fact and law. 1) Whether senior PG&E management was aware of Mr. Devereaux’s activities; 2) Whether the proposed fine and settlement is reasonable in light of the whole record; 3) Whether the settlement is in the public interest.

Dated: December 26, 2012 at Sebastopol  
California.

Respectfully submitted,

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**DECLARATION OF SANDI MAURER IN SUPPORT OF COMMENTS AND  
OPPOSITION TO JOINT MOTION FOR APPROVAL OF SETTLEMENT  
AGREEMENT**

1. I am a founding member and director of EMF Safety Network (Network), which began in October 2009 with the launch of our website [www.emfsafetynetwork.org](http://www.emfsafetynetwork.org). Network provides public education on health, environmental and safety impacts associated with electromagnetic fields (EMF) and radio frequency (RF) radiation exposure, including those from SmartMeters. I have personal knowledge of the following facts and, if called upon, could competently testify thereto.

2. As a participant in this proceeding and victim of PG&E's wrongful acts, I am familiar with PG&E's surveillance of anti-SmartMeter activists, including Network. I received a request from Ralph Florea at [manosota99@gmail.com](mailto:manosota99@gmail.com) to join the CA EMF Safety Coalition online discussion list. To ensure privacy, I moderate this group and require all participants to receive my prior approval before accessing the group. On November 4, 2010 I responded to "Ralph" to receive more information regarding his interest in the group. I received a response to this email that uncovered that Ralph was actually William Devereaux. The header of the email indicated Ralph's true identity.

3. As I was involved in SmartMeter issues, had filed Application A.10-04-018, which was an open proceeding before the Commission, and had met and talked with him at a public forum in Sebastopol, I recognized Mr. Devereaux's name and his association with PG&E.

4. As someone who is active in the anti-SmartMeter community, it is my belief that the vast majority of, if not all, activists identified in the documents produced in this proceeding reside within PG&E's service area, and are presumably PG&E customers.

5. Based on my review of the documents produced by PG&E in this case, there are at the very least 471 violations of relevant Public Utilities Code provisions. I calculated each violation as any email obtained from an anti-SmartMeter group that was then distributed by Mr. Devereaux. I reached 471 violations by counting each recipient of these emails as a single violation. For example, one private email sent to two recipients would be considered two

violations. These emails were seen and received by senior PG&E officers and employees. I believe there are many more violations based on my detailed review of the CPSD investigation documents. If given the opportunity to present testimony at an evidentiary hearing in this proceeding, I will provide appropriate proof and supporting documentation of these violations.

6. In my research I discovered Greg Kiraly, Devereaux's boss had received email which showed Devereaux used the term insurgents to describe customers opposed to Smart Meters.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed this 26<sup>th</sup> day of December 2012 at Sebastopol, California.

/s/ \_\_\_\_\_

Sandi Maurer