BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Public Advocates Office's Investigation of Communications Pertaining to the Wildfire Mitigation Plan of Pacific Gas and Electric Company	(Not In A Proceeding) Pub. Utils. Code § 309.5

REPLY OF THE PUBLIC ADVOCATES OFFICE TO PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 E) RESPONSE TO PUBLIC ADVOCATES OFFICE'S MOTION TO COMPEL AND REQUEST FOR SANCTIONS IN THE DISCOVERY DISPUTE BETWEEN PUBLIC ADVOCATES OFFICE AND PACIFIC GAS AND ELECTRIC COMPANY, NOVEMBER 2021; AMENDED [PROPOSED] RULING

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I. INTRODUCTION

Pursuant to Public Utilities Code Section 309.5(e) and Chief Administrative Law Judge Simon's December 20, 2021 email authorization,[1] the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this reply to the Pacific Gas and Electric Company's [PG&E] (U 39 E) Response to Public Advocates Office's Motion To Compel And Request For Sanctions (Response).[2]

Cal Advocates submitted its Motion of the Public Advocates Office for an Order Compelling Data Request Responses and Imposing Sanctions on Pacific Gas and Electric Company; [Proposed] Ruling (Motion to Compel) to Commission President Batjer on November 30, 2021. Pacific Gas and Electric Company (PG&E) submitted its Response on December 10, 2021. PG&E claims to make a good faith argument that Cal Advocates' statutory ability to obtain discovery from it requires that Cal Advocates explain the relevance of its requests to its statutory duties[3]. (p.9).

However, even accepting PG&E's statutory analysis for the sake of argument, PG&E's claim that it is refusing to cooperate with discovery because "Cal Advocates failed to explain the relevance of its requests to its statutory duties" is demonstrably false.[4] As shown below, PG&E's Response acknowledges that Cal Advocates repeatedly explained the relevance of its requests to its statutory duties. Though blurred by PG&E's inaccurate and inflammatory assertions, including that Cal Advocates is seeking to "monitor" and "exercise oversight" of Energy Safety, and "validate Energy Safety's decisions,"[5] the undeniable truth is that PG&E refuses to accept the explanations provided. PG&E's repeated attempts to distort Cal Advocates statements and failed efforts to intuit and ascribe Cal Advocates motives are merely attempts to mask the fact that there is no support for its arguments.

PG&E's claim that sanctions are not appropriate is equally uncompelling. As discussed in greater detail below, here again PG&E supplements a faulty analysis with distracting and

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[1] Cal Advocates requested permission to file this reply by December 20, 2021. It received permission on December 20, 2021. Rule 11.1(f).

[2] Pacific Gas and Electric Company (PG&E) filed its Response on December 10, 2021.

[3] PG&E Response, p. 9.

[4] PG&E Response, p. 9.

[5] *See, e.g.*, PG&E Response, pp. 2, 10, 12.

irrelevant facts, misleads with partial truths, and attempts to claim that PG&E is a new entity that is beyond reproach, that the present is independent of the past, and that Cal Advocates is somehow seeking to investigate other state agencies.

II. DISCUSSION

A. PG&E Fails to Follow its Own Flawed Analysis of Public Utilities Code Sections 309.5.

1. PG&E's "Legislative Analysis" of Public Utilities Code sections 309.5 is flawed.

PG&E claims that discovery requests "regarding communications between PG&E and Energy Safety are not relevant or related to Cal Advocates' statutory duties,"[6] and maintains that Cal Advocates must, but "failed to explain the relevance of its requests to its statutory duties."[7] PG&E's assertion about the discovery requests flies in the face of both logic and the process for Energy Safety review and approval of WMPs. To the extent that the communications at issue relate to PG&E's WMPs (the costs of which are traditionally passed on to ratepayers) the communications at issue are relevant to Cal Advocates' statutory duties on their face. PG&E's narrow interpretation of Cal Advocates' discovery authority is unsupported and contrary to law. At no point does PG&E identify any statute or Commission decision that requires Cal Advocates "to explain the relevance of its requests to its statutory duties."[8] That its interpretation of section 309.5(e) is at odds with numerous and recent Commission decisions such as D.01-08-062 and Resolution ALJ-391 is either ignored or perfunctorily dismissed by PG&E.[9] [10]

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[6] PG&E Response, p. 9.

[7] PG&E Response, p. 9.

[8] PG&E Response, p. 9.

[9] PG&E Response, pp. 8, 9.

[10] For example, PG&E claims that D.01-08-062 is not applicable to this case. However, in that case the Commission in D.01-08-062 settled that Cal Advocates has the authority to propound its discovery request on the utility, stating "ORA's scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners. It [sic] [is] constrained solely by a statutory provision that provides a mechanism unique to ORA for addressing discovery disputes." *See* D.01-08-062, p. 6; *see also* Resolution ALJ-391, pp. 9-11.

2. PG&E's Own Response Contradicts its Claims and Undermines its Analysis.

In addition to the aforementioned flaws in PG&E's statutory analysis, PG&E's claim that it is refusing to cooperate with discovery because "Cal Advocates failed to explain the relevance of its requests to its statutory duties" is demonstrably false.[11] As PG&E's Response acknowledges, Cal Advocates repeatedly explained the relevance of its requests to its statutory duties. Specifically, PG&E first acknowledges that Cal Advocates explained that it wants to conduct discovery regarding the approval of the 2021 WMP.[12] While PG&E correctly notes that Cal Advocates wants to review those communications and that we opposed PG&E's 2021 WMP, PG&E falsely states that "Cal Advocates now wants to conduct discovery regarding that approval, including any related communications between PG&E and Energy Safety, to determine the validity of Energy Safety's actions."[13] Cal Advocates has neither the authority nor the desire to monitor Energy Safety. Perhaps because it contradicts its false narrative, PG&E simply ignores the fact that Cal Advocates has explained to PG&E that Cal Advocates' data requests are directed at learning from the past WMP process in order to improve Cal Advocates' contributions to future WMPs.

Citing pages 8-9 of Cal Advocates' motion, PG&E next asserts that "Cal Advocates implies that the requested information is necessary to address potential inappropriate communication that violate ex parte rules." Here again, PG&E ignores what Cal Advocates has actually stated in favor of its false narrative. On page 7 of its Motion, in the same paragraph PG&E claims to reference, Cal Advocates once again explained to PG&E, that it "was made aware of a pending meeting between PG&E and the staff of Commissioner Guzman Aceves' office" that "PG&E was not required to and did not file a post meeting report of an ex parte communication" and that "Cal Advocates' data requests seeks to investigate the incidence, content, and reporting of other WMP-related communications PG&E may have had with Commissioner's offices that were not noticed by PG&E." Thus, contrary to PG&E's claim, Cal Advocates has not alleged any violations of the ex parte rules. PG&E's basis for refusing to

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[11] PG&E Response, p. 9.

[12] PG&E Response, p.9.

[13] PG&E does not and cannot provide citation, declaration, nor an offer of proof, in short, nothing to suggest this claim is in anyway attributable to Cal Advocates or rooted in actual events. See PG&E Response, p. 10.

answer the data request is a yet again a false and misleading attempt to mask the fact that Cal Advocates provided a good faith explanation of the relevance of its requests to its statutory duties.

Finally, PG&E states that for the first time in its motion, Cal Advocates presents "a new argument as to the need for communications between Energy Safety and PG&E – the 2022 WMP," "that the time for it to review 2022 WMPs is limited and thus discovery is necessary." Again, PG&E's claim is misleading. While the limited time allotted for Cal Advocates review was proposed to be reduced during this discovery dispute, Cal Advocates always been clear about the need to conduct discovery in advance of the actual WMP filing. PG&E is well aware that Cal Advocates has issued DRs in advance of the WMP, as intended to make the WMP process easier on parties and stakeholders.[14] PG&E's rejection of this explanation because "Cal Advocates fails to explain how communications which occurred last summer impact the 2022 WMPs, which have not yet been submitted nor has Energy Safety's Guidance been made final," ignores Cal Advocates' need to obtain information in advance of the filing. As PG&E is well aware, the decision-making process on the 2021 WMP feeds directly into the 2022 WMP.

Thus, PG&E's Response acknowledges that Cal Advocates has thrice provided a good faith explanation of "the relevance of its requests to its statutory duties." Though distorted by PG&E's false attribution of statements to Cal Advocates, and masked by PG&E's failed efforts to speak to Cal Advocates' motives and intentions, the undeniable truth is not that Cal Advocates did not explain the relevance of its requests, but rather, that PG&E refuses to accept the explanations provided.

B. PG&E's Bad Faith Warrants Sanctions.

Contrary to PG&E's intimations, a party's reasonable performance of some obligations does not excuse its bad faith actions in other areas. Here bad faith rests not in what the parties were able to agree to, how often they met, or how prompt some responses were – but rather on whether there was a good faith legal claim underlying PG&E's refusal to provide responses to

[14] In advance of the 2021 WMP submission, Cal Advocates issued to PG&E data requests, CalAdvocates-PGE-2021WMP-01, issued January 15, 2021, and CalAdvocates-PGE-2021WMP-02, issued January 20, 2021. In advance of the 2022 WMP submission, Cal Advocates issued to PG&E data requests, CalAdvocates-PGE-2022WMP-01, issued November 30, 2021, CalAdvocates-PGE-2022WMP-02, issued December 17, 2021, CalAdvocates-PGE-2022WMP-03, issued December 17, 2021, and CalAdvocates-PGE-2022WMP-04, issued December 17, 2021. Cal Advocates has issued similar requests to other investor-owned utilities on a similar timeframe.

the data requests at issue. Three facts illustrate that PG&E's legal claim was not made in good faith.

First, PG&E relies on a cobbled together interpretation of section 309.5(e) that is at odds with recent and relevant Commission decisions. Specifically, PG&E's claim that Cal Advocates must explain the relevance of its requests to its statutory duties is at odd with other decisions.[15] Second, PG&E showed bad faith where, as noted above, it both capriciously rejected the explanations provided by Cal Advocates and ignored the WMP approval process. As PG&E is well aware, both the Commission and Energy Safety review PG&E's WMP and wildfire safety efforts for approval of the WMP. To suggest that the relation of Cal Advocates' data requests to its statutory duties somehow change based on the recipient of the communications at issue in the data request makes no sense. Third, PG&E continues to show bad faith. Rather than use the meet and confer process in good faith to attempt to resolve this issue, PG&E is using it as a reference point for the conjecture, misleading statements, and outright falsehoods that dominate its Response.

Finally, PG&E points to the things it was required to do since it willfully violated the Commission's ex parte rules and claims to have "[i]mplemented processes and cultural changes so that it will not be repeated." However well intended they may have been, the fact is these processes and cultural changes did not stop PG&E from repeatedly making the false and misleading statements of fact and law identified above in its Response.

III. CONCLUSION

As set forth above, after offering nothing but its own interpretation of section 309.5(e) to support its demand that Cal Advocates explain the relevance of its requests to its statutory duties, PG&E unilaterally rejected the explanations and falsely claimed that no explanation was provided. Sanctionable bad faith lies in PG&E's having imposed discovery standards on Cal Advocates that contravene the plain language of section 309.5(e), as repeatedly affirmed in Commission decisions, PG&E's refusal to comply with the discovery standards it imposed, and its feigned ignorance of the connection between the WMP approval process and ratepayer interests. PG&E's claims of a new culture ring hollow as it continues to show bad faith where it

[15] D.01-08-062; Resolution ALJ-391; *see also* D.16-06-053, pp. 123-124, and D.00-02-046, pp. 200-202.

uses the meet and confer meetings as a reference point for the unsupported conjecture, misleading statements, and outright falsehoods that dominate its Response.

Accordingly, Cal Advocates respectfully requests the Commission order the production of the outstanding data request responses and provide sanctions for PG&E's discovery abuses as set forth in Cal Advocates' Motion.[16]

Respectfully submitted,

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[16] Responses to Cal Advocates' DR Questions 2 and 5 have been fully produced and do not require an order to compel.

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AMENDED [PROPOSED] RULING

Having reviewed the Public Advocates Office's November 30, 2021 Motion for an Order Compelling Data Request Responses and Imposing Sanctions on Pacific Gas and Electric Company (PG&E), and the arguments and supporting authority and evidence cited therein;

And, GOOD CAUSE APPEARING THEREFOR; the Motion of the Public Advocates Office to Compel and seeking Sanctions is **GRANTED**. PG&E has not provided legitimate objections to its refusal to comply with statute requirements, Public Utilities Code Sections 309.5(e) and 314, to respond to the Public Advocates Office's data request, CalAdvocates-PGE-NonCase-AWM-09302021A. PG&E is hereby sanctioned for its improper refusal to comply with its obligation to provide information to the Public Advocates Office.

(1) PG&E is ordered to provide complete and full responses to the following outstanding discovery requests propounded by the Public Advocates Office:

> CalAdvocates-PGE-NonCase-AWM-09302021A Propounded to PG&E on September 30, 2021, Responses Due October 14, 2021, **Questions 1, 3, 4**.

(2) PG&E is hereby ordered to pay fines of $1,000 per day it fails to produce complete and accurate responses to each question in data request CalAdvocates-PGE-NonCase-AWM-09302021A from October 14, 2021, and $2,000 per day from the date of the Commission's decision on the Public Advocates Office's motion to compel and for sanctions, until PG&E produces complete and accurate responses to each question to data request CalAdvocates-PGE-NonCase-AWM-09302021A.

IT IS SO ORDERED.

Dated_____ _____
ADMINISTRATIVE LAW JUDGE