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Congress of the United States  
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COMMITTEE ON ARMED SERVICES  
SUBCOMMITTEES:  
    READINESS  
    OVERSIGHT AND INVESTIGATION  
COMMITTEE ON OVERSIGHT AND  
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AND ENTITLEMENTS  
    NATIONAL SECURITY  
GUN VIOLENCE PREVENTION  
TASK FORCE  
Vice Chair

June 25, 2013

Ms. Cynthia Quarterman  
Administrator  
U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
East Building, 2nd Floor  
1200 New Jersey Ave., SE  
Washington, DC 20590

Dear Administrator Quarterman:

I respectfully request that the Pipeline and Hazardous Materials Safety Administration (PHMSA) investigate the California Public Utilities Commission's (CPUC) handling of safety actions being taken, and proposed to be taken, by the Pacific Gas and Electric Company (PG&E). Recent press reports (enclosed) and a letter to the Attorney General of California call into serious question the competence of the CPUC in the discharge of its duty towards public safety.

The CPUC appears to be rife with conflicts of interest between its role as a guardian of public safety, its role as a rate setter, and its role in ensuring the ongoing financial stability of the utility. A letter from the City of San Bruno (enclosed) notes the revolving door involving PG&E, other utilities, and the commission's staff. The city believes that ex parte communications have occurred during adjudicatory proceedings, and both the city and the press have reported that seasoned legal staff were reassigned, effectively removing them from the PG&E case, for reasons that appear unrelated to their competence.

Separately, allegations have been made to my staff that the Executive Director of the CPUC may have directed one or more administrative law judges involved in the PG&E proceedings to deny a motion related to the penalty to be paid by PG&E. From the public record available it appears that the instruction, if indeed it was made, was not obeyed by the administrative law judge. However, if the attempt to influence the proceeding in this manner happened, this would further undermine the integrity of, and public confidence in, the safety enforcement process at the CPUC.

There are many reasons why PHMSA should immediately investigate the actions of the CPUC with respect to the PG&E proceedings. Fundamentally, the federal government must assure itself that a state's regulatory processes continue to meet federal standards for integrity and scientific rigor. Upon review of the enclosures within this letter, as well as upon an investigation by PHMSA, I believe that there will be a serious question as to whether the CPUC remains qualified to carry out its responsibilities under federal law.

Sincerely yours,



Jackie Speier  
Member of Congress

cc: City of San Bruno, California Public Utilities Commission,  
Pacific Gas and Electric Company  
KJS/bp/rs



U.S. Department  
of Transportation  
**Pipeline and Hazardous Materials  
Safety Administration**

Administrator

1200 New Jersey Avenue, SE.  
Washington, DC 20590

JUL 15 2013

The Honorable Jackie Speier  
United States House of Representatives  
Washington, DC 20515

Dear Congresswoman Speier:

Thank you for your letter of June 25, 2013, requesting that the Pipeline & Hazardous Materials Safety Administration (PHMSA) investigate the California Public Utilities Commission (CPUC) based on recent events in the CPUC's legal office.

We have requested a direct response from President Michael Peevey of the CPUC regarding the recent events highlighted in your letter. Additionally, in accordance with our statute, PHMSA conducts performance and grant evaluations annually. This year's audit of the CPUC is scheduled for mid-July. When our audit report is finalized and when we have reviewed the response from the CPUC, PHMSA will evaluate what actions or proceedings against CPUC are warranted.

Safety is always PHMSA's highest priority and the agency will continue its efforts to ensure that state pipeline programs satisfactorily enforce federal safety standards. We are committed to formulating and implementing any changes needed to ensure the integrity of both interstate and intrastate gas and hazardous liquid pipelines for the communities in which they are located.

If you have any questions about this response, please do not hesitate to contact me or Ms. Patricia Klinger, Office of Governmental, International and Public Affairs, at 202-366-4831 or by email at [patricia.klinger@dot.gov](mailto:patricia.klinger@dot.gov).

Regards,

Cynthia L. Quarterman

# PG&E penalty unlawful, PUC lawyer says

Jaxon Van Derbeken

Updated 10:51 pm, Thursday, June 6, 2013

A state lawyer who worked for more than two years building a case against Pacific Gas and Electric Co. over the San Bruno natural gas explosion said Thursday that the Public Utilities Commission's suggested penalty for the utility - which would include no fines - is "unlawful."

Robert Cagen was one of four members of the state legal team who refused to sign the commission's final brief to a pair of administrative law judges considering potential penalties against PG&E. All the attorneys were reassigned to other legal duties.

The final brief, signed by the head of the utilities commission's safety division, urged that PG&E be penalized \$2.25 billion for the San Bruno explosion - but that the money that the company is spending to fix up its natural gas system constitute the penalty.

Levying a fine against PG&E that would go into the state's general fund "makes no sense," said safety division chief Jack Hagan. It would be better, he argued, to make sure PG&E spends the money fixing a natural gas system whose failings were exposed in September 2010 when a transmission pipe exploded in San Bruno, killing eight people and destroying 38 homes.

Hagan filed the commission's brief this week to the administrative law judges, who in turn will make a recommendation to the five members of the Public Utilities Commission, who are appointed by the governor.

Cagen, a member of the State Bar since 1973, was brought out of retirement by the commission in 2010 to handle PG&E-related cases.

In an e-mail Thursday, he wrote, "I personally could not continue working on the San Bruno penalty briefs because I concluded that the (safety division's) recommendations that were to be made in the briefs were unlawful and contrary to what our team had worked to accomplish in the last 2 1/2 years."

## Attorney-client rules

Reached by phone, Cagen would not say what he believes to be unlawful about the recommendations. Legal experts said he is barred under state law from revealing specifics about his objections to Hagan's legal filing.

Diane Karpman, a legal ethics lawyer in Beverly Hills, said any lawyer who divulges such specifics could run afoul of attorney-client confidentiality rules.

Hagan argued that forcing PG&E to spend \$2.25 billion on gas safety improvements would amount to the largest penalty ever assessed against a utility. On Thursday, he said he is aware that some utilities commission staffers had criticized his plan, but insisted it is consistent with his position that gas safety is a top priority.

"I made the decision that all the money should go into safety. I still believe that," said Hagan, who was an investigator with the state Department of Justice until last year. "I checked with the general counsel; he said this was not unlawful."

## 'They work for me'

He said the lawyers who disagreed had asked to be reassigned. "I can't really discuss what went on, because there is client-attorney privilege," he said. "I'm the client, and they work for me. You make your recommendation, the client makes the decision. That's the way life is."

Hagan added, "I don't have any love lost for PG&E. What they did was reprehensible, and they are not showing any remorse. I want to improve the system so we would never have this kind of event again."

The cities of San Bruno and San Francisco have filed recommendations for penalizing PG&E, as has a customer-advocacy group, The Utility Reform Network. All argued that PG&E should have to pay a fine in addition to other penalties.

Their attorneys said allowing PG&E to classify its gas-system improvements as a penalty would allow the company to write off the expenses, saving \$900 million in taxes.

## 'No penalty at all'

"It amounts to no penalty at all," said Tom Long, an attorney with The Utility Reform Network. "It would let PG&E get off without any financial consequences, because they would get credit for what they were going to have to pay for anyway."

In addition to Cagen, members of the utilities commission's legal team who refused to go along with Hagan's filing include Harvey Morris, the agency's assistant general counsel. He declined to comment Thursday.

Morris was reassigned after challenging PG&E's accounting of its gas-system testing and repair costs as totaling \$2.25 billion - a sum in line with Hagan's suggested penalty. The administrative law judges agreed with Morris that PG&E had insufficient evidence to back up the amount and threw it out.

PG&E has agreed that any penalty stemming from the San Bruno disaster should be borne by the company's shareholders and not its customers. But the company has argued that a \$2.25 billion total would be excessive.

*Jaxon Van Derbeken is a San Francisco Chronicle staff writer. E-mail: [jvanderbeken@sfchronicle.com](mailto:jvanderbeken@sfchronicle.com)*

Jeff Chiu, ASSOCIATED PRESS

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.

Jaxon Van Derbeken is a San Francisco Chronicle staff writer. E-mail: [jvanderbeken@sfchronicle.com](mailto:jvanderbeken@sfchronicle.com)

June 5, 2013

Via E-mail and U.S. Mail

Attorney General Kamala D. Harris  
California Attorney General's Office  
California Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

Dear Attorney General Harris:

Today the City of San Bruno (San Bruno) called for an immediate investigation by the Attorney General of the State of California into the resignation of four lead California Public Utilities Commission (CPUC) safety division attorneys into the deadly Pacific Gas and Electric Company (PG&E) explosion that occurred in San Bruno on September 9, 2010.<sup>1</sup> As a party to the CPUC proceedings and investigations, San Bruno has argued before the CPUC for significant fines and penalties against PG&E for its willful negligence in killing eight San Bruno residents, destroying 38 homes and leaving a hole in the center of its city and its heart.

To give you some background and context for our request for an investigation, San Bruno has come to the conclusion following over two years of participating in the CPUC adjudicatory process that the Commission is broken in many respects, and no longer capable of effectively monitoring the safety and security of the public utility infrastructure in California. The line employees and managers of the CPUC and in particular, the CPSD (now renamed Safety and Enforcement Division), and DRA Divisions are capable, diligent, and committed to the mission of the Commission and the safety of the public. But it is the very structure of the Commission and its leadership that we believe to be severely wanting. Specifically, the NTSB found that the ineffective enforcement posture of the CPUC allowed PG&E's organizational failures to continue for decades.<sup>2</sup> We believe nothing has changed

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<sup>1</sup> See attached San Bruno press release dated June 5, 2013

<sup>2</sup> <http://www.nts.gov/doclib/reports/2011/PAR1101.pdf>, page 122.



with regard to the governance of the Commission since September 2010 despite the NTSB findings because it is fundamentally flawed.<sup>3</sup>

In summary, we have noted the following systemic issues at the CPUC:

1. There is a revolving door at the CPUC between PG&E and other regulated utilities, such that there is no independence, no "cooling off period" before switching sides. This musical chairs game fosters coziness between the regulator and the utilities. For example, CPUC President Peevey is the former President of So. Cal Edison.<sup>4</sup> CPUC's General Counsel, now the lead attorney handling the San Bruno investigations, Frank Lindh, was counsel at PG&E for 16 years.<sup>5</sup>
2. We have reason to suspect that both PG&E and the CPUC violate strict laws against ex parte communications during adjudicatory proceedings.<sup>6</sup> In one backroom deal, Mr. Peevey and PG&E unilaterally selected a mediator for the settlement talks in the San Bruno investigations without consulting the parties. This put into question Mr. Peevey's commitment to an open, honest and transparent process in this matter of acute public concern.<sup>7</sup> The City of San Bruno only learned about this appointment through a CPUC press release.
3. We believe that the investigatory and prosecutorial functions of CPSD within the Commission are incompatible with the legislative and policy role of the Commission to promote the utility business. Prosecutions for safety violations should be moved to the Attorney General's office because, as we have discovered during these proceedings, CPSD cannot be independent, objective, and free from political influence at the CPUC and the Commissioners. We are looking to the Legislature and to your office for support of this reorganization concept.
4. CPUC investigations (OII's) and their associated proceedings are adversarial legal marathons with drawn-out trials and multiple briefing schedules, rather than factual investigations to obtain the truth (as contrasted with the 11 month NTSB process). PG&E has the power to bring whatever witnesses they want, including witnesses with no personal knowledge of the facts. Lawyers prepare the witnesses' testimony.

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<sup>3</sup> *Id.*

<sup>4</sup> <http://www.cpuc.ca.gov/PUC/aboutus/Commissioners/01Peevey/bio.htm>

<sup>5</sup> <http://www.sfexaminer.com/local/peninsula/2011/08/wake-san-bruno-blast-accusations-fly-about-revolving-door-between-pge-cpuc>

<sup>6</sup> Public Utilities Code Section 1701.2(2)(b)

<sup>7</sup> <http://www.bloomberg.com/article/2012-10-26/aNvThU533AA0.html>;  
<http://www.businessweek.com/ap/2012-10-17/sen-dot-mitchell-appointment-in-calif-dot-blast-opposed>

We also note that PG&E has an army of lawyers, consultants and unlimited resources, placing the other parties, especially the prosecutors at CPSD, at a tremendous disadvantage.

5. Lastly, and relating to San Bruno's request for an investigation, upper management at the CPUC has reassigned key staff in the investigations to other divisions within the CPUC and the entire legal team of the CPUC charged with investigating the explosion and fire has resigned from working on the investigations, leaving no CPUC legal experts with detailed knowledge of the case during the final penalty phase against PG&E. As well, Julie Halligan, CPSD's Deputy Director and one of the two CPSD employees leading the investigation who arguably had the most knowledge of the investigations has inexplicably been reassigned. Surprisingly, the Director of CPSD who has ultimate authority over the San Bruno investigations, Director Jack Hagan, has not been to any settlement discussions, hearings, meetings with the parties, and has no knowledge of even the elementary facts of the case.

The concerted action by these dedicated public servants who spent the last two-and-a-half years of their careers investigating PG&E and documenting its safety failures raises serious questions about the propriety of these proceedings and leadership of the CPUC. To San Bruno's knowledge, the resignation of so many public servants from a single case has never occurred before in CPUC history. The resignations pose serious questions about the CPUC: why did these--and other CPUC public servants--resign or were forced out? Is it because they did not want to see nearly three years of their work turned into a conclusion that lets PG&E off the hook? The issue at stake is that the leadership of the CPUC safety division portrayed their call for \$2.25 billion penalty against PG&E as the largest in utility history, but in reality the penalty would amount to much less, as the utility would be given 'credit' for \$1 billion it has allegedly spent since the Sept. 9, 2010 PG&E explosion and fire as well as state and federal tax deductions worth \$900 million. This so-called "penalty" allows PG&E to put money back into its system to make it safe, money it should have put into the system in the first place.

We also wanted to make you aware of recent news reports about an internal CPUC report.<sup>8</sup> The CPUC hired a private consulting firm to review CPUC's safety culture, the report is the product of interviews with CPUC upper management and staffers. The frank and candid report exposes CPUC's disregard for making safety a top priority and that the CPUC and utilities continue to have a cozy regulatory relationship. One unnamed CPUC staffer stated in an interview in the report:

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<sup>8</sup> <http://www.sfgate.com/file/504/504-Safety%20Culture%20Change%20Project%20Report.pdf>

Attorney General Harris

June 5, 2013

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“If we were enforcing the rules we would not have to worry about a safety culture. If we were holding the utilities accountable and doing what we were supposed to be doing, San Bruno would never have happened.”<sup>9</sup>

Although San Bruno would prefer a top to bottom investigation of the CPUC and CPUC President Peevey relating to the above pervasive issues, San Bruno is asking for an emergency investigation into these resignations due to the fact that the penalty portion of the investigations will be coming to a close in the end of the summer or the Fall of 2013. An investigation is the only way to provide fairness and transparency for San Bruno and the public in the penalty for PG&E's safety failures. Should you have any questions, please feel free to contact me at: (510) 808-2000.

Sincerely,

/s/ Britt K. Strottman  
Special Counsel, City of San Bruno  
Meyers Nave  
(510) 808-2000  
bstrottman@meyersnave.com

cc: Connie Jackson, City Manager, San Bruno (via Email)  
Marc Zafferano, City Attorney, San Bruno (via Email)

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<sup>9</sup> Id., page 2