

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Adopt New
Safety and Reliability Regulations for Natural
Gas Transmission and Distribution Pipelines
and Related Ratemaking Mechanisms

R.11-02-019
(Filed February 24, 2011)

**PACIFIC GAS AND ELECTRIC COMPANY'S MOTION
FOR CLARIFICATION AND/OR MODIFICATION OF
ASSIGNED COMMISSIONER'S RULING SETTING ORAL
ARGUMENT BEFORE THE COMMISSION, ETC.**

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April 1, 2011

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Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company ("PG&E") moves for an order clarifying and/or modifying the Assigned Commissioner's Ruling Setting Oral Argument Before the Commission, Designating Presiding Officer for Order to Show Cause Issues, and Scheduling Report to Commission from Pacific Gas and Electric Company ("ACR") issued on March 30, 2011. The ACR orders PG&E to "have witnesses available [at the oral argument] to respond to questions regarding the proposed stipulation and Order to Show Cause." (ACR, OP 1.) It also orders that "[t]he record on the Order to Show Cause issues shall be closed and the matter submitted with the conclusion of the oral argument." (ACR, OP 3.) Both of these ordering paragraphs are ambiguous and should be clarified and/or modified.

At the March 28, 2011 hearing, the testimony was limited to the stipulation between PG&E and the Commission's Consumer Protection and Safety Division ("CPSD"). As a result of that and the pending motions for approval, the stipulation is the only "Order to Show Cause issue" on which there is a record. PG&E thus assumes the ACR intends Ordering Paragraphs 1 and 3 to be limited to the stipulation. Any questions of witnesses at the oral argument will,

therefore, concern the stipulation and, at the conclusion of the oral argument, the record on the stipulation will be closed.

In the event the Commission does not approve the stipulation, the Commission must hold an evidentiary hearing. The issues raised by the Order to Show Cause are among the most serious non-safety issues the Commission ever addresses. The Commission has recognized that, in a contempt proceeding, “the procedural and evidentiary requirements are the most rigorous and exacting of all matters handled by the Commission.” *In re S. Pac. Transp. Co.*, 6 CPUC 2d 336, 1981 WL 165224, at *3 (1981). Thus, the burden of proof in the Order to Show Cause is higher than in any other type of proceeding before the Commission. *Id.* The staff must prove contempt beyond a reasonable doubt. *In re Facilities-based Cellular Carriers*, 57 CPUC 2d 176, 190, 205 (1994). *See also Bd. of Supervisors v. Superior Court*, 33 Cal. App. 4th 1724, 1736 (1995) (“The facts essential to jurisdiction for a contempt proceeding are (1) the making of the order; (2) knowledge of the order; (3) ability of the respondent to render compliance; (4) willful disobedience of the order.”) (citations and quotations omitted).

Before the Commission can move beyond the pending stipulation, take the merits of the Order to Show Cause issues under submission, and close the record, the Commission must afford PG&E its full due process rights. Those rights include an evidentiary hearing on the underlying allegations of the Order to Show Cause after the Commission gives PG&E adequate notice of the hearing. Following the presentation of CPSD’s case at such an evidentiary hearing, the Commission must provide PG&E an opportunity to put on its entire defense. *See, e.g., In re Oliver*, 333 U.S. 257, 275 (1948).

Because the parameters of the oral argument set out in the ACR do not contain these elements of due process, the Assigned Commissioner should issue another ACR clarifying

and/or modifying the March 30 ACR to make clear that the oral argument and any questioning at the argument will be limited to the stipulation between PG&E and CPSD.

Respectfully submitted,

/s/ Jonathan D. Pendleton

/s/ Joseph M. Malkin

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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On April 1, 2011, I served a true copy of:

**“PACIFIC GAS AND ELECTRIC COMPANY’S MOTION FOR
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BEFORE THE COMMISSION, ETC.”**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for **R.11-02-019 and I.11-02-016** with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for **R.11-02-019 and I.11-02-016** without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Francisco, California on April 1, 2011.

/s/
Rene Anita Thomas

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CPUC DOCKET NO. R1102019-11102016**

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