

From: Cherry, Brian K  
Sent: 10/21/2011 10:51:03 AM  
To: 'pac@cpuc.ca.gov' (pac@cpuc.ca.gov)  
Cc:  
Bcc:  
Subject: FW: Legal Division Motion

FYI

**From:** Malkin, Joseph M. [mailto:jmalkin@orrick.com]  
**Sent:** Friday, October 21, 2011 09:43 AM  
**To:** Stavropoulos, Nickolas; Park, Hyun; Bottorff, Thomas E; Hartman, Sanford (Law); Cherry, Brian K; Trevino, Rolando I.; Horner, Trina; Ramaiya, Shilpa R; Dowdell, Jennifer; [Redacted] Garber, Stephen (Law)  
**Cc:** Jordan, Lise (Law); [Redacted]  
**Subject:** FW: Legal Division Motion

**From:** Malkin, Joseph M.  
**Sent:** Friday, October 21, 2011 9:42 AM  
**To:** 'Gruen, Darryl'  
**Cc:** PGE Jordan, Lise; [Redacted]; Cagen, Robert; Johnson, Catherine A.  
**Subject:** RE: Legal Division Motion

Darryl,

Thank you for your email. As I understand it, Legal Division's proposal is as follows:

1. Legal Division has identified documents that it says it believes show a specific, immediate and significant safety issue.
2. Legal Division will not provide those documents to PG&E unless and until PG&E responds to Legal Division's pending Data Request set 16. PG&E's DR responses must be "direct" (presumably in Legal Division's judgment), without objection and without any extension (i.e., today).
3. If PG&E satisfactorily responds to the DRs today, Legal Division will thereafter

“immediately” provide the documents.

This proposal suggests either that Legal Division does not believe the documents it has identified indicate a specific, immediate and significant safety issue or Legal Division is acting irresponsibly by refusing to provide information about what it claims to believe is a genuine safety issue. In this regard, you should be aware that we received a set of data requests from CPSD yesterday asking us to identify and produce the documents alluded to in Legal Division’s Wednesday filing. Thus, it appears that Legal Division has not even advised CPSD of what it claims is a significant safety issue.

We cannot accept Legal Division’s proposal to make safety contingent on its satisfaction with our data request responses. While I can tell you that we will not be objecting to any of the data requests and we are working to finish responses to them all today, we may not have them all done and certainly not until late in the day. PG&E should not have to wait until the data request responses are complete to be able to begin analyzing the safety issue Legal Division says it has identified.

Instead of Legal Division’s proposal, we propose the following:

1. Legal Division will immediately provide us with the documents it believes indicate a significant safety issue so that PG&E can immediately begin to evaluate the issue and take whatever action is appropriate.
2. If those are the documents Legal Division wants to be able to make public, we will promptly redact any non-management employee information or locations of critical infrastructure so that Legal Division will have a public version of the documents. If there are other documents Legal Division wants to be able to make public, we will do the same thing promptly upon Legal Division providing us with the documents.
3. Legal Division and PG&E will file a joint pleading in the OII resolving Legal Division’s filing and withdrawing Legal Division’s motion. The pleading will provide as set forth in 1 and 2 above. The filing will be made today or Monday.

Please let me know by return email if Legal Division agrees.

Joe

**From:** Gruen, Darryl [mailto:darryl.gruen@cpuc.ca.gov]  
**Sent:** Thursday, October 20, 2011 6:12 PM  
**To:** Malkin, Joseph M.  
**Cc:** PGE Jordan, Lise; [Redacted]; Cagen, Robert; Johnson, Catherine A.  
**Subject:** RE: Legal Division Motion

Hi Joe:

Legal Division is prepared to disclose the documents you request immediately after PG&E files its response to Data Request 16, which is due tomorrow as shown in the first attachment. A copy of Data Request 16 is also attached for your convenience. Legal Division will disclose these documents on the condition that all of PG&E's responses directly answer the questions in the data request without any objections or requests for an extension of time. After Legal Division shares the documents, we will be happy to meet and confer to discuss matters further, if you feel that is still necessary. Let us know as soon as possible if PG&E agrees to these terms.

Darryl Gruen

Staff Counsel

California Public Utilities Commission

505 Van Ness Ave. - San Francisco, CA 94102

(415) 703-1973 - [djg@cpuc.ca.gov](mailto:djg@cpuc.ca.gov)

**From:** Cagen, Robert

**Sent:** Wednesday, October 19, 2011 8:26 PM

**To:** 'Malkin, Joseph M.'

**Cc:** Gruen, Darryl; PGE Jordan, Lise; Redacted

**Subject:** RE: Legal Division Motion

No Joe that is not accurate. We have an immediate safety issue that PG&E is going to need to address by looking through its data thoroughly to ascertain what pipes have been re-used in its system and what pipes are in its system with poor welds in them. If PG&E is again, as was true in San Bruno, unable to track and account for re-used or pipe with bad or marginal welds, and where the pipe is, then the Commission will need to decide how to ensure safety.

Bob.

**From:** Malkin, Joseph M. [mailto:jmalkin@orrick.com]  
**Sent:** Wednesday, October 19, 2011 8:11 PM  
**To:** Cagen, Robert  
**Cc:** Gruen, Darryl; PGE Jordan, Lise; [Redacted]  
**Subject:** Re: Legal Division Motion

Bob,

I take it then that you do not have any specific, immediate safety issue. Is that accurate?

Joe

On Oct 19, 2011, at 7:55 PM, "Cagen, Robert" <[robert.cagen@cpuc.ca.gov](mailto:robert.cagen@cpuc.ca.gov)> wrote:

Joe - the "junked" and "salvaged" terms are not how I characterize re-conditioned pipes - they are the exact terms used in PG&E's ECTS system and documents, often for pipe being re-used. Since achieving safety is PG&E's responsibility and goal, I know that PG&E will want to thoroughly go through the ECTS data base and any other data base necessary to ascertain exactly when and where pipes were re-used.

I don't know whether the 1948 documents are the same ones the NTSB commented on. That is irrelevant to alerting parties and the public that a safety issue exists that we believe should not wait until February to raise as a matter that needs consideration.

Bob

**From:** Malkin, Joseph M. [mailto:jmalkin@orrick.com]  
**Sent:** Wednesday, October 19, 2011 7:19 PM  
**To:** Cagen, Robert  
**Cc:** Gruen, Darryl; PGE Jordan, Lise; [Redacted]  
**Subject:** Re: Legal Division Motion

Bob,

Generically, neither of those is a new issue, and PG&E is addressing each of them through its MAOP validation, hydro testing, Pipeline Safety Enhancement Plan and other safety enhancements. As you undoubtedly know, the use of reconditioned pipe -- not "salvaged or junked" pipe, as you characterize it -- was a common practice in the industry at least through the 1950s. The 1948 Line 132 documents that you refer to appear to be the very ones the NTSB already

commented on.

Your motion, however, suggests that these are new and urgent safety issues -- so urgent that you could not even discuss the issue with us before filing the motion; so urgent that you had to file a motion to alert the "media, such as newspapers and television." If there is something you believe is urgent and not already being addressed, I repeat our request that you identify the issue with sufficient specificity that PG&E can deal with it.

Whether you identify specific documents or not, PG&E will continue its thorough safety review. As you know, the documents you have in mind all came from the ECTS data base PG&E is using for its MAOP validation. We will also continue to respond fully to your data requests.

Joe

On Oct 19, 2011, at 6:29 PM, "Cagen, Robert" <[robert.cagen@cpuc.ca.gov](mailto:robert.cagen@cpuc.ca.gov)> wrote:

Joe - the safety issues involved are pipes in the ground with weld defects in them, and the re-use of transmission pipe that may still be in the ground. You don't have to look at the documents to know those are both legitimate and important safety issues.

We certainly will be glad to point out specific documents to you, so that PG&E can address the safety issue,. We don't intend to do so until PG&E has provided adequate discovery to LD and CPSD about these matters. As you may know CPSD and LD have recently asked data requests about re-use of pipes and disposition of junked or salvaged pipes. Frankly, if we identify all the documents we possess on these subjects, we will not have provided PG&E with a strong incentive to conduct a thorough investigation and disclosure or the extent of the possible problem..

Bob

**From:** Malkin, Joseph M. [mailto:[jmalkin@orrick.com](mailto:jmalkin@orrick.com)]  
**Sent:** Wednesday, October 19, 2011 5:53 PM  
**To:** Cagen, Robert; Gruen, Darryl  
**Cc:** PGE Jordan, Lise;

**Subject:** Legal Division Motion

Bob & Daryl,

We just left voice messages for each of you. If Legal Division has identified documents that you believe raise safety issue, as your motion states, we request that you provide us copies of those documents or direct us to them ASAP so that PG&E can address the safety issue.

Joe

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