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

RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES TO PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO AMEND SCOPING MEMO AND REASSIGN TESTIMONY ABOUT PG&E'S PAST PRACTICES TO I.11-02-016

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I. INTRODUCTION

In accordance with Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission, the Division of Ratepayer Advocates ("DRA") hereby submits its response in opposition to Pacific Gas and Electric Company's ("PG&E") motion to amend the Amended Scoping Memo[1] to effectively strike the testimony of DRA and of other parties relating to PG&E's "past practices."[2]

DRA opposes PG&E's motion to amend the proper scope of this proceeding and to reassign testimony relating to PG&E's past practices to Investigation ("I.") 11-02-016. Simply put, Rulemaking ("R.") 11-02-019 is the ratesetting proceeding in which the Commission has decided to address the cost recovery issues related to the pipeline safety work that needs to be done on PG&E's gas transmission pipeline system. It is the proceeding in which PG&E has requested ratepayer funding for this work, over and above the funding authorized in its General Rate Cases. The testimony PG&E seeks to exclude from this proceeding is germane to its cost recovery request. Without that testimony the Commission would have only PG&E's proffered justifications for cost recovery, and no responsive testimony from the ratepayer perspective. The testimony of the ratepayer advocates (DRA and TURN) is within the scope of R. 11-02-019 and was provided pursuant to the explicit directives of the Assigned Commissioner.[3] PG&E's motion conflicts with those directives and should be denied.

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[1] *See* Rulemaking ("R.") 11-02-019, Amended Scoping Memo and Ruling of the Assigned Commissioner ("Scoping Ruling"), Nov. 2, 2011.

[2] *See* R.11-02-019, Pacific Gas and Electric Company's Motion to Amend Scoping Memo and Reassign Testimony About PG&E's Past Practices to I.11-02-016 and Request for Order Shortening Time to Respond ("PG&E Motion"), Feb. 3, 2012.

[3] *See* Scoping Ruling at 2, Attachment A at A3.

II. OPPOSITION TO PG&E MOTION

A. PG&E's Motion Is Contrary to the Commission's Directives in this Proceeding and in the Related Investigations

In Decision 11-06-017 in the instant proceeding, the Commission ordered PG&E and the other California natural gas transmission pipeline operators to submit pipeline pressure testing and replacement implementation plans.[4] The Commission noted that "[a] key question regarding the Implementation Plans is how the costs, which are expected to be significant, will be funded."[5] Accordingly, the Commission required PG&E and the other respondents to include information on costs and rate impacts in their submissions:

> We, therefore, direct that the plans as set forth above must include cost estimates and rate impacts to enable the Commission to fully consider the impacts of the final adopted plan. Obtaining the greatest amount of safety value, i.e., reducing safety risk, for ratepayer expenditures will be an overarching Commission goal in reviewing the plans presented by the gas transmission system operators.[6]

In addition, the Commission required PG&E to "include a cost-sharing proposal between ratepayers and shareholders,"[7] given that the "unique circumstances of PG&E's pipeline records and pipeline strength testing program for its pre-1970 pipeline may require extraordinary safety investments."[8]

On November 2, 2011, the Assigned Commissioner issued a ruling amending the scoping memo, and revising the procedural schedule "to allow the parties sufficient time to obtain such expert assistance as is needed to prepare the highest quality testimony."[9]

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[4] *See* Decision ("D.") 11-06-017, Decision Determining Maximum Allowable Operating Pressure Methodology and Requiring Filing of Natural Gas Transmission Pipeline Replacement or Testing Implementation Plans, June 9, 2011, *mimeo.* at 31-32, Ordering Paragraphs 4-10.

[5] D.11-06-017 at 22.

[6] D.11-06-017 at 22.

[7] D.11-06-017 at 22; *see also* p.29, Ordering Paragraph 7.a.

[8] D.11-06-017 at 22, citing R.11-02-019, Order Instituting Rulemaking, February 24, 2011, at 11.

[9] Scoping Ruling at 2.

The Scoping Ruling states:

> The issues in this proceeding require an **in-depth analysis of historical safety practices** and ratemaking treatment, as well as innovative proposals to address prospectively safety and ratemaking. The testimony that will be most useful to the Commission as it considers these issues will include an **assessment of past practices** and proposals for future operations and ratemaking based on rigorous analysis.[10]

Attachment A to the Scoping Ruling includes a list of issues to "assist the parties in preparing their testimony on [the] general topics" of revenue requirements, rate design ("cost allocation methodology") and rate of return.[11] The Scoping Ruling instructs parties to "carefully review this list for ideas and beginning points in their analysis, and [parties] are encouraged to develop other issues as well."[12] One of the issues included in Attachment A that is specific to PG&E asks: "Should parties and the Commission examine the history of PG&E's past expenditures, management practices with regard to safety, and record keeping practices that has led to the necessity for gas safety implementation plans and possibly new safety regulations, in order to determine a fair sharing of costs?"[13]

Thus, based on the plain language of the Scoping Ruling, the Commission clearly intends to address PG&E's "past practices" in connection with its proposed Implementation Plan, and explicitly calls for related testimony. Both I.11-02-016 (the Commission's investigation into PG&E's record keeping practices) and I.12-01-007 (the Commission's investigation to determine PG&E violations of applicable law in connection with the San Bruno explosion and fire) point to this rulemaking as the appropriate proceeding in which to address the issues enumerated in the Scoping Ruling:

> [W]e place PG&E on notice that the Commission will decide in a separate proceeding whether PG&E ratepayers or shareholders, or both, will pay for PG&E testing, pipe replacement, or other costs. Some costs may stem from the

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[10] Scoping Ruling at 2, emphasis added.

[11] Scoping Ruling at 3.

[12] Scoping Ruling at 3.

[13] Scoping Ruling, Attachment A at A3.

> San Bruno pipe rupture or from recordkeeping deficiencies. Both past and future costs will be significant.[14]

That "separate proceeding" is R.11-02-019, which is also the proceeding in which PG&E seeks authority to recover from ratepayers most of the costs of its proposed Implementation Plan. Thus, R.11-02-019 is the proceeding where the testimony relating to costs and cost responsibility belongs. PG&E's motion appears to be an attempted end-run around the Commission's directives regarding the scope of this rulemaking and should be denied.

B. The Testimony PG&E Seeks to Exclude Is Relevant and Within the Scope of this Ratesetting Case

PG&E's motion to amend the scoping memo is, in essence, a motion to strike testimony that is properly within the scope of this proceeding. A motion to strike may be appropriate when, for example, proffered testimony is irrelevant. This is clearly not the case here.

1. PG&E Seeks to Strike Relevant Testimony

The Commission recognizes that this proceeding "require[s] an in-depth analysis of historical safety practices and ratemaking treatment" and deemed "[t]he testimony that will be most useful to the Commission as it considers these issues will include an assessment of past practices and proposals for … ratemaking based on rigorous analysis."[15] PG&E characterizes the issues in this rulemaking as falling into four categories or "buckets," one of which PG&E defines as: "How the Commission should allocate costs between shareholders and customers based on the Commission's finding

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[14] Investigation ("I.") 11-02-016, Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines, Feb. 24, 2011, at 15. *See also* I.12-01-007, Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010, Jan. 12 2012, at 11: "Some costs may stem from the San Bruno pipe rupture or from recordkeeping deficiencies, both of which could be significant."

[15] Scoping Ruling at 2.

concerning PG&E's past practices."[16] PG&E believes this bucket and the related testimony should be addressed in the Records OII. However, the issues of PG&E's historical safety and records keeping practices and the appropriate cost responsibility for the Implementation Plan are intertwined. As DRA states in its prepared testimony:

> One of the primary concerns identified subsequent to the San Bruno explosion by various government entities has been PG&E's lack of records and proper record maintenance associated with its natural gas system including but not limited to hydrostatic testing which has been an industry standard for over 75 years. The San Bruno explosion and PG&E's gas system recordkeeping are inextricably linked to the Gas OIR and resulting costs associated with PG&E Implementation Plans submitted pursuant to this rulemaking.[17]

The Scoping Ruling recognizes this linkage: "Should parties and the Commission examine the history of PG&E's past expenditures, management practices with regard to safety, and record keeping practices that has led to the necessity for gas safety implementation plans and possibly new safety regulations, in order to determine a fair sharing of costs?"[18] But PG&E misinterprets this issue: according to PG&E, "[t]he issue raised, however, was whether the Commission should consider PG&E's past practices; it was not an invitation to import claims about those practices from I.11-02-016 or other OIIs."[19] Is PG&E suggesting that the Commission should only allow a "yes" or "no" answer without any supporting testimony? We think not. The Scoping Ruling explicitly requested testimony that provides an in-depth assessment of PG&E's past practices, and the schedule for this proceeding provides a single opportunity for DRA and other intervenors to submit prepared testimony on PG&E's Implementation Plan. And regardless of how PG&E chooses to interpret Attachment A, the Scoping Ruling is explicitly clear about what the Commission expects: "The testimony that will be most

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[16] PG&E Motion at 5.

[17] DRA Report on the Pipeline Safety Enhancement Plan of Pacific Gas and Electric Company ("DRA Report"), Exhibit DRA-02 (Pocta), Policy – Cost Recovery, Jan. 31, 2012, at 10.

[18] Scoping Ruling, Attachment A at A3.

[19] PG&E Motion at 5.

useful to the Commission as it considers these issues will include an assessment of past practices and proposals for future operations and ratemaking based on rigorous analysis."[20] DRA and TURN provided such testimony and now PG&E seeks to exclude it. It is not for PG&E to define the scope of the testimony that appropriately belongs in this proceeding.[21]

Policy recommendations pertaining to cost recovery may be based on a wide range of considerations, including past actions of a utility. It is up to the Commission to weigh the relative merits of parties' proposals and supporting testimony. Moreover, in providing testimony that refers to PG&E's historical practices, DRA and other intervenors are not "importing claims" from other proceedings; whether PG&E's "past practices" violated the law is not the subject of their testimony. That PG&E has missing or insufficient pipeline records is, however, a fact relevant to the scope of work needed (especially, but not limited to, maintaining adequate records) and to whether shareholders or ratepayers should bear the costs. Moreover, that fact, in particular, is not in dispute: "PG&E has stated that it is not able to provide specific records of every component in its natural gas transmission pipelines."[22]

PG&E also asserts that excluding relevant testimony from this proceeding "is consistent with the treatment of reasonableness and ratemaking review of SDG&E's and SoCalGas' Implementation Plan."[23] However, PG&E's case is distinct from the Sempra Utilities' and may not warrant exactly the same approach in light of specific, possibly unique, facts and circumstances. The San Bruno disaster occurred in PG&E's service territory and implicates PG&E's historical safety and recordkeeping practices, and the

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[20] Scoping Ruling at 2.

[21] If PG&E wished to seek clarification of the Scoping Ruling, it had ample opportunity to file a timely motion for clarification and need not have waited until DRA and intervenors served their testimonies.

[22] D.11-06-017 at 27, Finding of Fact 2; *see also* I.11-11-009, Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with Higher Population Density, Nov. 10, 2011.

[23] PG&E Motion at 2.

Commission in D.11-06-017 directed PG&E, specifically, to "include a cost-sharing proposal between ratepayers and shareholders"[24] with its Implementation Plan proposal.

The Scoping Ruling provides: "Any recommendations that utility shareholders bear a portion of the costs of future safety-related expenses and investments must be well supported, and address the safety implications of the proposed ratemaking treatment."[25] Much of the testimony PG&E seeks to exclude is precisely such support and is directly responsive to that directive.[26] For instance, DRA provides extensive support for its proposal that PG&E shareholders cover all costs associated with hydrostatic testing in the absence of records showing a test was performed in accordance with industry standards. Furthermore, PG&E itself put into play in this proceeding the issue of its historical recordkeeping practices. PG&E has proposed a Pipeline Records Integration Program ("PRIP") as part of its Implementation Plan. PG&E estimates a total cost for its proposed PRIP of nearly $286 million for the period 2011-2014, out of which PG&E proposes to recover from ratepayers approximately $223 million. DRA opposes PG&E's request for ratepayer funding of any portion of PRIP because, among other reasons, PG&E has failed to maintain accurate and complete record on its pipes for 30 years. In short, PG&E's "past [recordkeeping] practices" are made relevant by PG&E's request, in this proceeding, for ratepayer funding for its PRIP proposal.

2. The Commission Must Consider PG&E's "Past Practices" To Decide Cost Responsibility

It would be contrary to the provisions of the Public Utilities Code for the Commission to make **any** decisions about cost recovery without considering the impact of PG&E's past practices. In determining whether to authorize rate increases, the

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[24] D.11-06-017 at 22; *see also* p.29, Ordering Paragraph 7.a.

[25] Scoping Ruling at 3; see also Attachment A at A3: "Is PG&E's proposed shareholder sharing of expenditures reasonable? What factors should be considered in determining a fair amount of shareholder sharing? What is a reasonable basis for determining the level of costs shareholders should absorb? What are alternative forms or mechanisms of shareholder sharing?"

[26] *See, e.g.*, DRA Report, Exhibit DRA-02; The Utility Reform Network ("TURN"), Prepared Testimony of Thomas J. Long on Cost Responsibility Issues, Jan. 31, 2012.

Commission must find the proposed costs and associated rate increases just and reasonable. Section 451 of the Code provides: "All charges demanded or received by any public utility … for any product or commodity furnished or to be furnished or any service rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity is unlawful."[27] It would be unreasonable to impose the cost burden on ratepayers for activities that PG&E is expected to conduct on an ongoing basis pursuant to its obligation to provide safe and reliable service, and which are funded by ratepayers on a regular basis through rate cases. PG&E's ratepayers should not have to pay twice (or more) for testing, recordkeeping, developing integrity management plans and other activities. For this reason, the Commission regularly considers a utility's "past practices" in rate cases,[28] and appropriately should consider such PG&E activities here. Indeed, the Commission is required to disallow costs resulting from a utility's imprudent recordkeeping and

[27] *See also* Cal. Pub. Util. Code §§ 454 ("[N]o utility shall change any rate … except upon a showing before the commission and a finding by the commission that the new rate is justified."), 728 ("Whenever the commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force.").

[28] *See, e.g.*, *Re Pacific Gas and Electric Company* (1998) 83 CPUC 2d 208 (D.98-11-067, affirming disallowance of $100 million from recoverable Diablo Canyon nuclear plant sunk costs, based on an admitted error by contractors during the plant's construction); *Re Southern California Edison Company* (1994) 53 CPUC 2d 452 (D.94-03-048, disallowing costs associated with an accident and explosion at a coal slurry generating plant that killed six utility employees); *Re Pacific Gas and Electric Company* (1985) 18 CPUC 2d 700 (D.85-08-102, disallowing costs based on managerial imprudence and inadequate attention during construction of Helms Pumped Storage Project); *Re Southern California Edison Company* (1985) 22 CPUC 2d 124 (D.85-03-087, disallowing repair costs associated with defective steam generator equipment at San Onofre Nuclear Generating Station Unit 1); *Re Southern California Edison Company* (1986) 22 CPUC 2d 124 (D. 86-10-069, disallowing $344.6 million in construction costs of SONGS units 2 and 3 as a result of imprudence and unreasonable delays in completion of the project).

operations. Section 463 provides:

> **§ 463. Disallowance of expenses resulting from unreasonable errors relating to planning, construction, or operation of plant**
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> **(a)** For purposes of establishing rates for any electrical or gas corporation, the commission shall disallow expenses reflecting the direct or indirect costs resulting from any unreasonable error or omission relating to the planning, construction, or operation of any portion of the corporation's plant which cost, or is estimated to have cost, more than fifty million dollars ($50,000,000), including any expenses resulting from delays caused by any unreasonable error or omission. Nothing in this section prohibits a finding by the commission of other unreasonable or imprudent expenses. This subdivision is a clarification of the existing authority of the commission, is not intended to limit or restrict any power or authority of the commission conferred by any other provision of law, and applies to all matters pending before the commission. This section does not prohibit the commission from establishing rates for an electrical or gas corporation on a basis other than an allowed rate of return on undepreciated capital costs.
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> **(b)** Whenever an electrical or gas corporation fails to prepare or maintain records sufficient to enable the commission to completely evaluate any relevant or potentially relevant issue related to the reasonableness and prudence of any expense relating to the planning, construction, or operation of the corporation's plant, the commission shall disallow that expense for purposes of establishing rates for the corporation. This subdivision does not apply where the commission determines that a reasonable person could not have anticipated either the relevance or potential relevance, to an evaluation of costs incurred on the project, of preparing or maintaining the records or the extent of recordkeeping required to adequately evaluate those costs.

As DRA and other parties have pointed out, PG&E's lack of records, inadequate inspection and testing and poor maintenance practices have driven the need to undertake Implementation Plan activities in a compacted timeframe, which in turn may drive costs higher than industry norms.[29] Evidence that past imprudence caused costs to be higher than they should be goes directly to the issue of whether the Commission must disallow such costs. To exclude such relevant testimony would be wholly improper.

[29] *See* DRA Report, Exhibit DRA-03 (Roberts), Pipeline Modernization Plan; TURN, Prepared Testimony of William B. Marcus.

3. Policy Testimony Related to Cost Recovery Is Not Relevant to the Records OII

An additional reason to deny PG&E's motion to exclude policy testimony related to cost recovery from this rulemaking and transfer it to the investigation (penalty) proceeding on recordkeeping ("Records OII") is that the testimony PG&E asks to transfer does not belong in that penalty case. Cost recovery for PG&E's Pipeline Safety Enhancement Plan is not within the scope of I.11-02-016. The purpose of that case is to "assess PG&E's compliance with the law pertaining to safety-related recordkeeping for natural gas transmission pipelines."[30] The Records OII further states:

> This proceeding will pertain to PG&E's safety recordkeeping for the San Bruno, California gas transmission pipeline that ruptured on September 9, 2010, killing eight persons. The investigation will also review and determine whether PG&E's recordkeeping practices for its entire gas transmission system have been unsafe and in violation of the law.[31]

The DRA testimony that PG&E seeks to exclude from this rulemaking and reassign to the Records OII is policy testimony addressing the recovery of costs that PG&E seeks to include in its rates. That is a matter for this rulemaking and not the OII.

C. Transferring the Ratepayer Advocates' Testimony to the OII Would Improperly Shift the Burden Away from PG&E to Justify Ratepayer Funding of Its Proposed Implementation Plan

PG&E's request to "reassign" testimony to the Records OII and effectively strike it from this rulemaking should be denied for another, very important reason. Reassigning the relevant testimony to an enforcement proceeding would shift the burden away from PG&E to demonstrate that the costs associated with its proposed Implementation Plan are reasonable and that requiring ratepayers to pay for it is also just and reasonable.

PG&E offers as a reason to transfer DRA's and other parties' relevant testimony to the OII, that "[t]he OII is already addressing past practices and any penalties (whether

[30] I.11-02-016 at 1.

[31] I.11-02-016 at 1.

in the form of cost disallowances, shareholder contribution, reduced return on equity or otherwise) associated with them."[32] PG&E's statement ignores the fundamental differences between ratesetting proceedings such as the instant case and enforcement proceedings such as the OII, and between penalties (fines) and ratemaking decisions such as reducing the return on equity. Among these important distinctions are the burden of proof, the nature of the inquiry and the remedies available.

1. Burden of Proof

In enforcement actions, the Commission has the burden of proving that the subject utility violated the law. For instance, the San Bruno "investigation will focus on PG&E's past actions and omissions to determine whether PG&E has violated laws requiring safe utility gas system practices. The Commission has broad authority to impose fines and other remedies if such violations are proven."[33] In contrast, in a ratesetting proceeding, the applicant utility carries the burden of demonstrating that its proposals and associated costs and rate increases are reasonable and should be approved by the Commission.[34] That is the case here, where PG&E has submitted its Implementation Plan along with requests for ratepayer funding of the costs of the proposed activities.

2. Nature of Inquiry and Findings

A utility's past acts are often considered both in a rate case and in an enforcement case, and sometimes in criminal or civil court actions as well. PG&E's tree-trimming practices, for example, led to an enforcement case, civil and criminal actions, and relatively small disallowances.[35] However, the nature of the inquiry and the findings

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[32] PG&E Motion at 1-2.

[33] I.12-01-007 at 10.

[34] *See, e.g.*, D.06-11-018, Opinion on Methodology for Economic Assessment of Transmission Projects, I.05-06-041, Nov. 9, 2006, *mimeo.* at 22: "The Commission has long held that the applicant carries the burden of proof in a certification proceeding, and we reiterate those determinations today."

[35] *See* D. 99-06-080 (addressing PG&E's response to the severe wind and rainstorms of December 1995) in A.94-12-005 (Application of Pacific Gas and Electric Company for Authority Among Other Things, to Decrease its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipe Expansion Service) and I. 95-02-015 (Commission Order Instituting Investigation into the rates, charges,

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necessary to resolve the application or action are different. In an enforcement case, the principal question is whether the utility's actions violated the law. In a ratesetting case, the question is **whether the utility's past actions were reasonable in light of its request for ratepayer funding now before the Commission--whether it met or failed the "prudent manager" standard.**[36] This is a very different inquiry and a very different standard than in an enforcement case. A utility does not have to violate the law to fail the prudent manager standard. A ratesetting case is fundamentally forward-looking and the determinations about past prudency are necessary to resolve the forward-looking question of what work is needed now and whether it should be done at ratepayer expense.

3. Nature of Remedies

The remedies available in a ratesetting versus an enforcement proceeding are different, and are set forth in different sections of the Public Utilities Code. Remedies for violations include fines (§§2107 – 2114) and restitution or reparations (§ 734) In a ratesetting case, the Commission has wide discretion to adopt remedial ratesetting measures such as disallowances, removing items improperly included in rate base, reducing rate of return, requiring one-way balancing accounts and requiring the utility to return overcollections to ratepayers, based on findings that a utility collected more than its authorized rate of return, failed to keep necessary records, or acted unreasonably in

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service, and practices of Pacific Gas and Electric Company).

[36] *See* 18 CPUC 2d at 710:

> We first consider the appropriate standard of care and performance which should be applied to this project. Utilities are obligated to provide their services at the highest degree of reliability and safety commensurate with the lowest reasonable costs. While we have generally referred to the utilities' obligations in terms of "reasonableness" and "prudence", it is this fundamental notion by which we adjudge managerial decisions. It is a high standard but one that we have repeatedly expressed. It should be no surprise to PG&E that we find to be compelling the Staff's arguments that ratepayers have an entitlement to the benefits of the exercise of prudence. And where, as here, tasks are undertaken which in and of themselves are of such enormity as to greatly expose the utilities and potentially their ratepayers to substantial financial risks, utilities must exercise even greater care and managerial acumen than would be called for in ordinary circumstances.

other ways in operating its system.[37] Ratemaking tools such as these enable the Commission to protect ratepayers' interests going forward.

The testimony that PG&E seeks to exclude proposes various ratesetting remedies and the reasons they are warranted and appropriate in light of PG&E's past acts and omissions.[38] The Commission needs such testimony in the ratesetting case in order to determine how to protect ratepayer interests as well as shareholder interests. To strike this extremely relevant and necessary testimony from the ratesetting case and to address cost responsibility issues in the OII would effectively shift the burden of proof away from PG&E.

Because the ratesetting and enforcement proceedings have different perspectives and address different issues, the fact that there may be overlap in the evidence presented need not disrupt or delay either proceeding or lead to duplication of efforts, as PG&E claims. The Commission has implicitly recognized this overlap in both the Records OII and the San Bruno OII: "We also place PG&E on notice that in the rulemaking the Commission may take note of the record evidence in this investigation."[39] DRA and other parties whose testimony PG&E seeks to exclude have followed that Commission directive by relying on and incorporating by reference portions of the OII record.[40] These parties have considered the findings of the National Transportation and Safety Board and of the Commission's Consumer Protection and Safety Division, among others, and have addressed the import of those findings on PG&E's Implementation Plan proposal and cost recovery request.

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[37] *See, e.g.*, Southern Calif. Edison Co. v. Public Util. Comm'n (1978) 20 Cal. 3d 813, 827-831 (recognizing the Commission's ratemaking discretion to "mitigate the windfall" of utility overcollections).

[38] *See, e.g.*, DRA Report, Exhibit DRA-02; TURN, Marcus Testimony.

[39] I.11-02-016 at 15; I.12-01-007 at 11.

[40] *See, e.g.*, DRA Report, Exhibits DRA-02 and -03; TURN, Long Testimony.

III. CONCLUSION

The testimony that PG&E seeks to exclude is properly within the scope of this proceeding and essential to the cost recovery issues the Commission intends to address. PG&E's motion should be rejected as improper and contrary to Commission directives in R.11-02-019, I.11-02-016 and I.12-01-007.

Respectfully submitted,

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