

**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)

**MOTION OF THE JOINT PARTIES TO COMPEL TESTIMONY OF PG&E's
FINANCIAL AUDIT EXPERT**

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March 21, 2012

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Pursuant to Rule 10.2 of the California Public Utilities Commission's (CPUC's) Rules of Practice and Procedure, the Black Economic Council, Latino Business Chamber of Greater Los Angeles and the National Asian American Coalition (cumulatively "Joint Parties") hereby respectfully request the issuance of a ruling to compel the testimony of either Chief Financial Officer Kent M. Harvey, Controller Dinyar B. Mistry, or the Head of the Audit Committee Barry L. Williams, for the purpose of cross examination by all the intervening parties during the evidentiary hearings beginning on March 19, 2012 in this proceeding.

The Joint Parties also move to present their witness, Faith Bautista, to sponsor the survey of 190 ratepayers conducted by her organization, the National Asian American Coalition (NAAC) on behalf of the Joint Parties.¹ Ratepayer attitudes are extremely important in this proceeding, given that a key component of this proceeding is to determine how the gas pipeline safety upgrades will be paid for. The survey conducted by the NAAC, which is marked for

¹ Exhibit 22.

identification, is hotly contested by PG&E, who has a rebuttal witness scheduled to testify on this issue.

The Joint Parties' ratepayer survey affects the fundamental credibility of the only consumer survey PG&E has conducted on gas pipelines, a study which fails to focus on ratepayer views on safety or cost recovery. This PG&E survey indicated that PG&E customers were extremely satisfied with PG&E's products and services. Whether the ratepayers are satisfied or not speaks directly to their willingness to pay for scheduled upgrades as well as to whether there will be public support for the Commission's ultimate decision on the issue of how the upgrades are funded.

Lastly, the Joint Parties request that CEO Anthony Early be made available in evidentiary hearings only if the designated financial executive is unable to answer the questions to the full satisfaction of the Joint Parties and/or if the PG&E customer survey expert cross-examined by the Joint Parties demonstrates such a need.

I. Growing Concerns About Auditing Practices at Deloitte & Touche Require Examination.

The Pacific Gas & Electric Company (PG&E) uses Deloitte & Touche as their independent auditor.² Deloitte & Touche is the only major CPA firm singled out for severe criticism in its auditing practices and the reliability of its methods by the Public Company

² Public Company Audit Clients of Deloitte & Touche LLP available at: http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Content/Articles/AERS/us_aers_Client%20List%20Jan%201%202011.pdf.

Accounting Oversight Board (PCAOB) for the year 2007 and was subsequently criticized by the PCAOB as to its auditing practices in 2010.³

On October 17, 2011, the Public Company Accounting Oversight Board (PCAOB) released a critical report on the 2007 inspection of Deloitte & Touche LLP. The New York Times has examined the PCAOB's published criticisms of Deloitte's practices⁴ (*see* PCAOB criticism for 2010 Deloitte & Touche audits discussed in a later part of this section):

"In too many instances," the [Public Company Accounting Oversight Board] report stated, inspectors from the board "observed that the engagement team's support for significant areas of the audit consisted of managements' views on the results of inquiries of management."

In some cases, Deloitte auditors did not bother to even consider whether accounting decisions made by companies were consistent with accounting rules. Instead, auditors accepted management assertions that the accounting was proper, the board's report said.

... Until now, the accounting oversight board, which was created by the Sarbanes-Oxley law in 2002 in the wake of failures at Enron and WorldCom, *had never released such a report on a major firm.* [emphasis added]

... The report pointed to "a firm culture that allows, or tolerates, audit approaches that do not consistently emphasize the need for an appropriate level of critical analysis and collection of objective evidence, and that rely largely on management representations.

... In addition to conducting inspections, the [PCAOB] has the power to take disciplinary action against firms and individual partners, with penalties up to barring a person or firm from participating in future audits. But the Sarbanes-Oxley law requires that such enforcement proceedings be kept confidential until they are finally resolved, which can take years, so there is no way to know if the board has taken action against Deloitte or any of its partners.

³ See Michael Rapaport, *Audit Watchdog Criticized Deloitte Quality Controls in '08*, Wall St. J., Oct. 18, 2011; Floyd Norris, *Accounting Board Criticizes Deloitte's Auditing System*, N.Y. Times, Oct. 17, 2011; and Floyd Norris, *Audit Flaws Revealed, At Long Last*, N.Y. Times, Oct. 20, 2011.

⁴ Floyd Norris, *Accounting Board Criticizes Deloitte's Auditing System*, N.Y. Times, Oct. 17, 2011.

The fact that this report was released years after its internal publication is explained by the Wall Street Journal:⁵

The [Public Company Accounting Oversight] board inspects accounting firms regularly to evaluate their audit performance and compliance with professional standards, and it issues a public report on the inspection. But part of the board's report, on the firm's quality controls, is sealed, to give the firm a chance to address any criticisms.

Only if a firm doesn't address quality-control criticisms to the board's satisfaction within a year does the accounting regulator release that section of the report publicly....

The Deloitte criticisms are only being released now, three years after the report, because after the firm has a year to address the problems, the board has to evaluate and test those efforts, and that process can be time-consuming for large, complex firms like Deloitte.

Thus, the concerns of the PCAOB have not been satisfactorily resolved in the years following the internal report, and the publication of the report at this stage indicates a pattern of the offending behavior.

An additional PCAOB report for the year 2010, issued December 20, 2011, demonstrates very substantial concerns continue as to Deloitte & Touche's audits. Of the 58 Deloitte & Touche audits examined by the PCAOB for 2010, 26 were found to be deficient.⁶ This demonstrates a continued pattern and practice of faulty auditing services in almost half of the audits performed by Deloitte & Touche.

All the companies covered by the CPA audits included in the PCAOB investigation are kept confidential. However, at the very least, this Commission should know if PG&E was included in this sample and if it was one of the companies that were found to have deficient audits. Without cross-examining a knowledgeable witness on this issue, the Joint Parties urge

⁵ Michael Rapoport, *Audit Watchdog Criticized Deloitte Quality Controls in '08*, Wall St. J., Oct. 18, 2011.

⁶ Michael Rapoport, *Accounting Board Finds Faults in Deloitte Audits*, Wall St. J., Dec. 21, 2012.

that the Commission cannot adequately put faith in the numbers put forth by PG&E in this matter.

In addition, even if PG&E was not one of the selected companies, the fact that almost half of the companies in the sample had deficient audits raises serious doubts as to the accuracy of any audits performed by Deloitte & Touche. Essentially, the accuracy of a Deloitte & Touche audit could be determined by a coin toss.

The Joint Parties believed that Mr. Bottorff, PG&E's highest policy witness, would be able to answer questions regarding their concerns on Deloitte & Touche. However, Mr. Bottorff informed the Commission that he was unaware of the fact that the federal government's Public Company Accounting Oversight Board chastised Deloitte & Touche for not following Generally Accepted Accounting Principles.⁷

When asked who would be the appropriate person in his company who would know about issues with Deloitte & Touche, Mr. Bottorff directed the Joint Parties to PG&E's controller, PG&E's audit committee, or PG&E's Chief Financial Officer.⁸ Therefore, the Joint Parties now request the presence of one of these witnesses to testify regarding the audits of Deloitte & Touche, identified as Chief Financial Officer Kent M. Harvey, Controller Dinyar B. Mistry, or the Head of the Audit Committee Barry L. Williams. The Joint Parties will allow PG&E to determine who of these persons would be the most knowledgeable on the issues pertaining to this matter.

The PCAOB's hearings on this matter begin today, March 21, 2012, in Washington D.C. A representative from the Joint Parties will testify on this issue tomorrow before the PCAOB.

⁷ Transcript, Page 758.

⁸ Transcript, Page 761.

She will recommend a variety of reforms , including removing Deloitte & Touche as an auditor for companies regulated by the California Public Utilities Commission, including PG&E and Sempra.

II. The Joint Parties Move that Faith Bautista Should Testify in This Proceeding

As a part of this motion, the Joint Parties request that they be allowed to call Ms. Bautista in order to admit the NAAC Community Survey of 190 Ratepayers on Gas Pipeline Safety Issues into evidence.⁹ PG&E has not indicated any plans to cross-examine Ms. Bautista. Given the rejection of Exhibit 22 at the Evidentiary Hearings in this matter on March 19, 2012, the Joint Parties request that Ms. Bautista, the CEO & President of the National Asian American Coalition, be allowed to testify in order to admit the survey into the record. Ms. Bautista is currently meeting with regulators, including the Public Company Accounting Oversight Board in Washington D.C., and will be available on or after March 27, 2012.

This survey is particularly important to enter into evidence because of the recent revelations that the gas pipeline safety upgrades could cost more than \$11 billion , with the shareholders absorbing only \$370 million, or 3%.¹⁰ This new estimate of the cost, as well as the portion of the costs to be paid by the ratepayers, speaks directly to the importance of the survey conducted by the NAAC as the only study that can give any guidance to the Commission about ratepayer attitudes on this matter.

Ratepayer attitudes are also particularly important now that PG&E has proposed that the Commission off-set any upcoming fine by \$221 million, the amount already spent on improving

⁹ Exhibit 22.

¹⁰ Transcript, Pages 837 - 838.

the gas pipelines.¹¹ Without the Joint Parties' ratepayer survey, the Commission will not have a complete record on ratepayer views on developing cost recovery issues.

III. Mr. Earley is Only Requested if Other Witnesses Are Inadequate

The Joint Parties recognize that Mr. Earley is extremely busy with his duties with PG&E. Therefore, the Joint Parties only request the appearance of Mr. Earley if the designated financial executive cannot adequately address the Joint Parties concerns regarding Deloitte & Touche.

Additionally, the Joint Parties further request that Mr. Earley be made available for cross-examination after Ms. Bautista testifies on the ratepayer's attitudes if there are still questions as to ratepayer attitudes or if there are senior or executive level policy questions that must be addressed should PG&E's customer survey witness be unable to fully respond to the Joint Parties' cross-examination.

IV. Conclusion: The Commission Should Grant the Joint Parties Motion to Compel Testimony from a Financial Executive at PG&E and to Allow Ms. Bautista to Testify on Ratepayer Attitudes.

The Joint Parties recognize that filing this motion during evidentiary hearings may cause some logistical difficulties for the Commission. However, please note that the Joint Parties fully expected Mr. Bottorff to be able to answer substantive questions regarding Deloitte & Touche given his high standing at PG&E. The Joint Parties believe that this Commission and the other parties must be made aware of the concerns regarding Deloitte & Touche and have the opportunity to examine these concerns within this proceeding. This is particularly important because an accurate audit is a centerpiece of this proceeding, as explained by ALJ Bushey when

¹¹ Jaxon Ven Derbeken, *PG&E's Strategy to Offset Big Fine: It wants \$221 million credit for earlier work*, S.F. Chron., Mar. 21, 2012, pg. C-1 and C-5.

she indicated that issues with Deloitte & Touche “go[...] to the rate of return and that’s the big issue here [in this proceeding].”¹²

For the reasons stated above, the Joint Parties respectfully request that the Commission grant this motion to compel the testimony of one of the designated financial executives of PG&E, allow Ms. Bautista to present ratepayer views on the gas pipeline improvements, and request Mr. Earley to be available on these issues if they are unsatisfactorily addressed by other PG&E witnesses.

Dated: March 21, 2012.

Respectfully submitted,

/s/ Len Canty
Len Canty, Chairman
Black Economic Council

/s/ Faith Bautista
Faith Bautista, President and CEO
National Asian American Coalition

/s/ Jorge Corralejo
Jorge Corralejo, Chairman
Latino Business Chamber of Greater Los Angeles

/s/Robert Gnaizda
Robert Gnaizda, Of Counsel

/s/ Shalini Swaroop
Shalini Swaroop, Senior Staff Attorney

¹² Transcript, Page 759.

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[PROPOSED] ADMINISTRATIVE LAW JUDGE'S RULING

In accordance with its Rules of Practice and Procedure, the California Public Utilities Commission ("Commission") has considered the Motion of the Joint Parties to Compel Testimony of PG&E's Financial Audit Expert, filed March 21, 2012 in the above captioned proceeding, and further arguments of the parties. For good cause shown, the Commission hereby ORDERS as follows:

The Motion of the Joint Parties shall be GRANTED as follows:

PG&E's designated choice between Chief Financial Officer Kent M. Harvey, Controller Dinyar B. Mistry, or the Head of the Audit Committee Barry L. Williams is compelled to appear before the California Public Utilities Commission during evidentiary hearings, in the case of Rulemaking 11-02-019, for the purpose of cross-examination.

Dated _____, 2012 at San Francisco, California.

Administrative Law Judge Bushey