

**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 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**

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REQUEST FOR ORDER SHORTENING TIME TO RESPOND**

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 (1) amending the Amended Scoping Memo and (2) reassigning testimony about PG&E's past practices to I.11-02-016, an enforcement proceeding also being presided over by Commissioner Florio.

Amending the Amended Scoping Memo allows this proceeding to stay focused on safety – the technical aspects of PG&E's Pipeline Safety Enhancement Plan (Safety Plan) and the reasonable cost of executing it. Testimony about PG&E's past practices will be taken up in I.11-02-016. Such testimony, put forward by some of the intervenors, is not within the scope of the present proceeding but overlaps with the issues raised by the Order Instituting Investigation (OII). These and other interested parties will have the opportunity to support or add to the analyses by the Commission's Consumer Protection and Safety Division in I.11-02-016, and to participate in hearings. It would be disruptive to the OII and require duplication of the Commission's and parties' efforts to litigate the same issues in two proceedings. The OII is already addressing past practices and any penalties (whether in the form of cost disallowances,

shareholder contribution, reduced return on equity or otherwise) associated with them. Reassigning the testimony about PG&E's past practices promotes the efficient use of the Commission's resources and is consistent with the treatment of reasonableness and ratemaking review of SDG&E's and SoCalGas' Implementation Plan.¹

Because PG&E's rebuttal testimony on its Safety Plan is due in 25 days, PG&E requests that the time to respond to this motion be shortened to seven days.

I. THE TESTIMONY

On January 31st, six intervenors submitted the testimony of 17 witnesses concerning PG&E's Safety Plan. Most of that testimony addresses technical aspects of the plan, PG&E's cost estimates, and cost recovery and rate design. (*See, e.g.*, Exs. DRA-03 (Roberts); DRA-04 (Rondinone); DRA-05 (Delfino); DRA-06 (Scholz); DRA-07 (Oh); TURN testimony of Kuprewicz, pp. 6-70; NCIP testimony of Beach, pp. 4-5, 8-21; CCSF testimony of Gawronski, pp. 4-14, 17-18; CCSF testimony of Scott, pp. 23-37, 40-41; CCSF testimony of Teumim, pp. 49, 55-63); CCSF testimony of Radigan; CCUE testimony of D. Marcus; TURN testimony of W. Marcus.)

Other testimony goes beyond these issues and includes allegations from reports submitted in other proceedings (*e.g.*, TURN testimony of Long, p. 4 ("each of which is incorporated by reference," referring to the NTSB Report, the IRP Report, CPSD's Report in I.12-01-007, and the Report of Overland Consulting in I.12-01-007) and/or additional opinions about PG&E's past practices (*e.g.*, TURN testimony of Kuprewicz, pp. 71-80).² The testimony of TURN witness

¹ See December 21, 2011 Assigned Commissioner's Ruling Modifying Schedule to Allow Operators to Respond to Consumer Protection and Safety Division Reports and Providing Further Direction on the Reassignment of Certain Reasonableness, Cost Allocation, and Cost Recovery Issues from the Rulemaking to Another Proceeding.

² Attachment A contains a complete list of the testimony that addresses OII issues.

Long, while containing appropriate policy testimony on cost recovery principles, has intermingled it with assertions about PG&E's past practices that make it impossible to carve out elements that belong in this proceeding rather than the OII.

The next section shows that the testimony addressing the OII issues is outside the scope of the current proceeding. As discussed in Section III, some of the intervenors themselves acknowledge that the Commission must await the results of the pending OIIs before deciding cost allocation between shareholders and customers. The Assigned Commissioner should amend the Amended Scoping Memo as described in Section III.

II. TESTIMONY ABOUT PG&E'S PAST PRACTICES IS OUTSIDE THE SCOPE OF THE PRESENT PROCEEDING.

When the Commission started it a year ago, it made clear that this OIR has a different objective than I.11-02-016, which the Commission started the same day:

This rulemaking is a forward-looking effort to establish a new model of natural gas pipeline safety regulation applicable to all California pipelines. Specific investigations of PG&E's conduct and any penalties will take place in a different docket.

(R.11-02-019 at 1.) The Commission also made clear how OIIs and the ratemaking for PG&E would be coordinated:

We will take official notice of the record in other proceedings, including the investigation of PG&E's gas system record-keeping, in our ratemaking determination.

(R.11-02-019 at 12 n6.)

The June 16, 2011 Scoping Memo and Ruling of the Assigned Commissioner established the initial scope of this stage of the proceeding as "the preparation and filing of the implementation plans required by D.11-06-017" as well as comments on the report of the Independent Review Panel. (6/16/2011 Scoping Memo at 3.) D.11-06-017 directed PG&E to include "a cost-sharing proposal between ratepayers and shareholders" as part of its Safety Plan,

and reminded the parties that R.11-02-019 stated the Commission intended to take official notice of the record in other proceedings, specifically including I.11-02-016. (D.11-06-017 at 22-23.)

Thus, nothing in D.11-06-017 or the June 16, 2011 Scoping Memo suggested that the proceedings on PG&E's Safety Plan would overlap with I.11-02-016 by allowing parties to litigate issues of past practices here as well as in the OII. On the contrary, D.11-06-017 was explicit that issues of past practices would be considered in the OII and the Commission would take official notice of the record in that proceeding as necessary or useful here.

The November 2, 2011 Amended Scoping Memo and Ruling of the Assigned Commissioner did not change that determination. The Amended Scoping Memo provided that intervenors' ratemaking testimony should address three general topics: (1) revenue requirements; (2) rate design; and (3) rate of return. (11/2/2011 Amended Scoping Memo at 3.) With respect to revenue requirements, the Amended Scoping Memo stated, "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." (*Id.*) That this was not an invitation to litigate issues concerning PG&E's past practices was made clear by the attached detailed list of issues prepared by Energy Division "to assist the parties in preparing their testimony on these general topics." (*Id.*)

The three PG&E-specific issues identified by Energy Division were as follows:

19. Should PG&E provide an estimate of the total cost of their Implementation Plans, beyond 2014?

20. 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?

21. 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?

(11/2/2011 Amended Scoping Memo, Attachment A at A3.)

The last issue posed by Energy Division is apparently the one that led intervenors to submit testimony about PG&E's past practices. The 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. Neither the question Energy Division posed nor the Amended Scoping Ruling suggests the Assigned Commissioner intended to deviate from the Commission's course of taking official notice of record in I.11-02-016 and, instead, litigate PG&E's past practices in two proceedings. Thus, the testimony addressing PG&E's past practices, identified in Attachment A, is outside the scope of this proceeding.

III. THE ASSIGNED COMMISSIONER SHOULD AMEND THE AMENDED SCOPING MEMO.

The final resolution of PG&E's Safety Plan involves four "buckets" of issues:

1. The technical merits of the Safety Plan.
2. The reasonableness of PG&E's forecast of the cost of the elements of the Safety Plan.
3. Cost recovery and rate design proposals.
4. How the Commission should allocate costs between shareholders and customers based on the Commission's findings concerning PG&E's past practices.

All but the last of these is within the scope of this proceeding and, with the submission of PG&E's rebuttal testimony on February 28th, will be ready for hearings and a Commission decision. Intervenors themselves recognize that a definitive allocation of cost responsibility

between shareholders and customers based on PG&E's past practices must follow the outcome of the pending OIIs. For example, CCSF witness Radigan states (p. 74):

The Commission is conducting several other proceedings that should result in additional information that is relevant to the appropriate allocation of costs between ratepayers and the company, including the penalty consideration case (I.12-01-007), the recordkeeping case (I.11-02-106), and the HCA investigation (I.11-11-009). As such, the City believes that it is premature to make the determination which costs are truly incremental and what the cost sharing responsibility should be.

Similarly, TURN witness Long states (p. 1):

[T]he Commission does not yet have a complete record of all of PG&E's errors and omissions in the operation of its gas transmission pipeline system and how those failings may have contributed to the need for the programs and projects in the Plan. Accordingly, it is too early to offer a final quantified recommendation on cost apportionment.

Not only would it be duplicative of the pending OIIs to try to address those issues here, it would unnecessarily delay the Commission's decision on the Safety Plan. Commissioner Florio has scheduled 10 days of hearings on the Safety Plan. By contrast, Commissioner Florio has scheduled 10 days of hearings in I.11-02-016 on recordkeeping issues alone. If all of the issues raised by the pending OIIs were imported into this proceeding, the hearing schedule would have to be delayed and expanded by weeks, if not months.

Rather than delay addressing the important safety work proposed in the Safety Plan, the Assigned Commissioner should amend the Amended Scoping Memo. The further amended Scoping Memo should reassign the testimony listed in Attachment A to I.11-02-016.³ That proceeding is looking into whether PG&E violated any "provisions of the Public Utilities Code

³ I.11-02-016 is the Records OII. Discovery in that proceeding has been the broadest to date and it is the closest to hearings, which are scheduled for September. If Commissioner Florio determines that some of the testimony listed on Attachment A is better suited for one of the other two pending OIIs, he can reassign it to one of those.

(Pub. Util. Code), general orders, decisions, other rules, or requirements identified in this Order, and/or engag[ed] in unreasonable and/or imprudent practices related to these matters.” I.11-02-016, OP 3. The reassigned testimony should be treated as intervenor testimony in I.11-02-016. Since intervenor testimony in I.11-02-016 is not otherwise due until April 5, 2012, the intervenors should be free to supplement or supersede that testimony on or before that date. PG&E’s rebuttal to that intervenor testimony, along with the CPSD report, will be submitted as scheduled on June 25, 2012.

The reassignment of the testimony about PG&E’s past practices leaves this proceeding to focus on the first three “buckets” of issues: the technical merits of PG&E’s Safety Plan, the reasonableness of the forecast costs, and cost recovery and rate design proposals.

Amending the Scoping Memo in this way allows for the most efficient consideration of both the safety issues to which this proceeding is directed and the penalty and disallowance issues on which the OIIs are focused. When the extent of any shareholder “disallowance” or cost contribution is known at the conclusion of the OIIs, PG&E should be directed to make a compliance filing in this proceeding that reflects those results in the adopted revenue requirements for the approved Safety Plan.

IV. CONCLUSION

Most of the intervenor testimony submitted on January 31st addresses the core issues of this proceeding: the technical merits of PG&E’s Safety Plan, the reasonableness of the costs associated with that plan, and cost recovery and rate design. Some of it goes further and introduces issues already in front of the Commission in I.11-02-016 and the other pending OIIs. That testimony is both outside the scope of this proceeding, and more efficiently considered as

part of those enforcement proceedings. The Assigned Commissioner should amend the Amended Scoping Memo and reassign the testimony listed in Attachment A to I.11-02-016.

Because PG&E's rebuttal testimony is due in 25 days, the Assigned Commissioner or Administrative Law Judge should issue an order shortening the time to respond to this motion to seven days.

Respectfully submitted,

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Attachment A

PARTY	WITNESS	PAGES	SUBJECT
TURN	Thomas J. Long	3-17	Assertions about PG&E's past practices, including incorporation of reports in pending OIIs, interspersed throughout policy testimony
TURN	Richard Kuprewicz	5	Summary refers to past practices, including recordkeeping, integrity management
		71-77	Past recordkeeping
		77-80	Past integrity management and pipe replacement
TURN	William Marcus	3-10, 12-13	Shareholder disallowance proposals due to prior practices, Overland (past revenues and spending)
NCIP	Thomas Beach	3:13-4:3	Overland (past revenues and spending)
		6-7	Past recordkeeping; TIMP
		22:22-27:12	Overland (past revenues and spending), recordkeeping, integrity management; past risk management
CCSF	John Gawronski	3	Integrity management; past violations of regulations; past recordkeeping
		14-17 (Q26-Q29)	Integrity management; past recordkeeping
		19-21	Excerpts from CPSD's 1/12/2012 San Bruno Incident Investigation Report in I.12-01-007
CCSF	Michael Scott	38-40 (Q28-Q29)	Past recordkeeping; integrity management
CCSF	Phillip S. Teumim	50-54; 64	Overland (prior spending), safety culture, integrity management, past violations of regulations
DRA	David Peck	4-5; 9:9-14	Past recordkeeping
DRA	Robert Pocta	3-5, 13:16-16:7	NTSB San Bruno findings, Overland (past revenues and spending)
		20-29	Past recordkeeping issues, Class Location OII (I.11-11-009), integrity management, reduction of rate of return for past practices
DRA	Tamera Godfrey	2:1-9; 11-18	Past recordkeeping; "hold PG&E fully accountable" for past practices
		3:18-4:13	Overland (past revenues and spending)
		7:13 – 8:4	San Bruno OII (I.12-01-007)
DRA	Pearlie Sabino	40-41	Past recordkeeping
		43-45	Penalty for prior practices (reduced rate of return)