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Sent: 8/23/2012 5:49:31 PM  
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Bcc:

Subject: RE: I.11-11-009 (Classification OII) - Continuation of Hearings

Dear ALJ Yip-Kikugawa,

We are uncertain what you intend to have happen on Monday, August 27. Please let us know if you intend for us to bring one or both of our witnesses.

As to your apparent desire to have Mr. Berger appear to testify on Thursday, August 30, please be advised that PG&E objects to this procedure. The SMYS issue was not one the Commission identified in the OII. In fact, unlike the issues the Commission specified in the OII, it is not even a class location issue per se. Rather, it is an issue CPSD identified in the course of its class investigation and raised in its May report. Thus, there does not appear to be a basis on which to deny CPSD the right, in conjunction with the respondent, to withdraw that issue from the current proceeding and pursue it in the San Bruno OII where CPSD has been raising it since January.

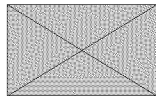
Beyond that, Mr. Berger has not previously been designated as a witness in any of the pending OIIs. The testimony to which your email refers is sponsored by Raffy Stepanian in the San Bruno OII. We received it on Monday of this week and we have not yet initiated any discovery or preparation for it. This is because the San Bruno OII is not scheduled for hearing until September 24.

Mr. Berger's appearance here will be for an enforcement proceeding in which PG&E faces, as the Commission has said, the potential for significant penalties. The SMYS issue alone in CPSD's view amounts to more than 1 million daily violations. Under these circumstances, your ruling does not, in our view, comport either with the Commission's usual procedures or the requirements of due process in a penalty proceeding.

In lieu of the questionable procedure of advancing in this docket a portion of the San Bruno Oil hearing with a new witness on one week's notice, we urge you either to allow CPSD to withdraw this issue from the Class Oil or adopt the procedure you suggested near the close of today's session: bifurcate this issue and sit with ALJ Wetzell in that portion of the San Bruno Oil.

Sincerely yours,

Joe Malkin



**Joseph M. Malkin**  
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**From:** Yip-Kikugawa, Amy C. [mailto:[amy.yip-kikugawa@cpuc.ca.gov](mailto:amy.yip-kikugawa@cpuc.ca.gov)]

**Sent:** Thursday, August 23, 2012 4:55 PM

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**Subject:** Re: I.11-11-009 (Classification OII) - Continuation of Hearings

Correction of proceeding number.

On Aug 23, 2012, at 4:45 PM, "Yip-Kikugawa, Amy C." <[amy.yip-kikugawa@cpuc.ca.gov](mailto:amy.yip-kikugawa@cpuc.ca.gov)>  
wrote:

<image001.gif>

All,

After conferring with the Assigned Commissioner, we will resume hearings in  
this proceeding on Monday, August 27 at 10:00 a.m.

In advance of this hearing, CPSD shall:

1. Serve the relevant portion(s) of its rebuttal testimony to the Zucher  
testimony concerning assumed specified minimum yield strength (SMYS)  
values that it had submitted in I.12-01-007. (See RT, Vol 1-EH at 17:15-19). I  
have done a preliminary review of the rebuttal testimony in that proceeding, and  
believe that, at a minimum, the relevant portion is on pages 17 (line 5) through  
18 (line 12).
2. Inform me of Mr. Berger's availability to appear as a witness on Thursday,  
August 30.

CPSD shall provide this information by close of business tomorrow, August 24,  
2012.

Sincerely,

Amy C. Yip-Kikugawa

Administrative Law Judge

California Public Utilities Commission

(415)-703-5256

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