

From: Yip-Kikugawa, Amy C.
Sent: 8/24/2012 10:53:54 AM
To: Malkin, Joseph M. (jmalkin@orrick.com)
tlong@turn.org (tlong@turn.org); austin.yang@sfgov.org (austin.yang@sfgov.org);
cjackson@ci.sanbruno.ca.us (cjackson@ci.sanbruno.ca.us); Berdge, Patrick S.
(patrick.berdge@cpuc.ca.gov); Garber, Stephen (Law
(/o=PG&E/ou=Corporate/cn=Recipients/cn=SLG0); RegRelCPUCCases
(/O=PG&E/OU=Corporate/cn=Recipients/cn=RegRelCPUCCases); Duenas, Rosa
Cc: (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=R1DJ1);
mrw@mrwassoc.com (mrw@mrwassoc.com); mchediak@bloomberg.net
(mchediak@bloomberg.net); ray.welch@navigantconsulting.com
(ray.welch@navigantconsulting.com); kdaly@stinson.com (kdaly@stinson.com);
argay@arcassetltd.com (argay@arcassetltd.com); ted@PointState.com
(ted@PointState.com); JLSalazar@SempraUtilities.com
(JLSalazar@SempraUtilities.com); lauren.duke@db.com (lauren.duke@db.com);
jheckler@levincap.com (jheckler@levincap.com); STomkins@semprautilities.com
(STomkins@semprautilities.com); scott.senchak@decade-llc.com
(scott.senchak@decade-llc.com); DNg@semprautilities.com
(DNg@semprautilities.com); cleo.zagrean@macquarie.com
(cleo.zagrean@macquarie.com); dvanhoogstraten@stinson.com
(dvanhoogstraten@stinson.com); jdangelo@catapult-llc.com (jdangelo@catapult-
llc.com); mfranco@semprautilities.com (mfranco@semprautilities.com);
SHruby@SempraUtilities.com (SHruby@SempraUtilities.com);
jonathan.arnold@db.com (jonathan.arnold@db.com); anjani.vedula@db.com
(anjani.vedula@db.com); John.A.Apgar@Citi.com (John.A.Apgar@Citi.com);
li@zimmerlucas.com (li@zimmerlucas.com); Cherry, Brian K
(/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7); Lieu, Lisa
(/O=PG&E/OU=Corporate/cn=Recipients/cn=LKL1); Nelson, Nicole
(/O=PG&E/OU=Corporate/cn=Recipients/cn=NRN2); Peck, David B.
(david.peck@cpuc.ca.gov); sls@a-klaw.com (sls@a-klaw.com); marcel@turn.org
(marcel@turn.org); cem@newsdata.com (cem@newsdata.com);
bcragg@goodinmacbride.com (bcragg@goodinmacbride.com);
mdjoseph@adamsbroadwell.com (mdjoseph@adamsbroadwell.com);
atrowbridge@daycartermurphy.com (atrowbridge@daycartermurphy.com); rvn@a-
klaw.com (rvn@a-klaw.com); rkoss@adamsbroadwell.com
(rkoss@adamsbroadwell.com); douglas.porter@sce.com (douglas.porter@sce.com);
wmc@a-klaw.com (wmc@a-klaw.com); RCavalleri@SempraUtilities.com
(RCavalleri@SempraUtilities.com); sgs@dcbsf.com (sgs@dcbsf.com);
dmarcus2@sbcglobal.net (dmarcus2@sbcglobal.net); theresa.mueller@sfgov.org
(theresa.mueller@sfgov.org); service@cforat.org (service@cforat.org);
grant.kolling@cityofpaloalto.org (grant.kolling@cityofpaloalto.org);
bstrottman@meyersnave.com (bstrottman@meyersnave.com);
RPrince@SempraUtilities.com (RPrince@SempraUtilities.com);
smeyers@meyersnave.com (smeyers@meyersnave.com); nsuetake@turn.org
(nsuetake@turn.org); francis.mcnulty@sce.com (francis.mcnulty@sce.com);

Dorman, Elizabeth (elizabeth.dorman@cpuc.ca.gov); dweber.nwngs@nwnatural.com (dweber.nwngs@nwnatural.com); Kotch, Andrew (andrew.kotch@cpuc.ca.gov); Mark.Gall@smud.org (Mark.Gall@smud.org); gburke@ap.org (gburke@ap.org); angelica.morales@sce.com (angelica.morales@sce.com); jmullan@meyersnave.com (jmullan@meyersnave.com); Bruno, Kenneth (kenneth.bruno@cpuc.ca.gov); Paull, Karen P. (karen.paull@cpuc.ca.gov); Prosper, Terrie D. (terrie.prosper@cpuc.ca.gov); Lee, Kelly C. (kelly.lee@cpuc.ca.gov); Khosrowjah, Sepideh (sepideh.khosrowjah@cpuc.ca.gov); Kito, Michele (michele.kito@cpuc.ca.gov)

Bcc:

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

Mr. Malkin,

Commissioner Florio and I have determined that the issue of assumed SMYS values should be considered in this proceeding. CPSD identified that a number of pipeline segments that had been identified as being out-of-class in the Class Location Study were using assumed SMYS values that exceeded the 24,000 psi specified in 49 CFR section 192.107. As such, it is directly related to the main issues in this proceeding.

As discussed yesterday, CPSD should be allowed an opportunity to submit the rebuttal testimony it had served in the San Bruno OII concerning the assumed SMYS values if the issue were to remain in this proceeding. The purpose of Monday's hearing is to provide for that opportunity and to discuss the next steps in this proceeding. As part of setting next steps, I would like parties to review the rebuttal testimony and determine whether cross-examination of this witness is needed and, if so, the timing for cross-examination to occur. This is why I have asked CPSD to submit the pertinent portions today. If it is determined that cross-examination can occur next week, I would like to hold hearings on Thursday, August 30th. If that were to occur, PG&E's witnesses should also be available that day. If it is determined that cross-examination cannot be held next week, I will coordinate with Judge Wetzell to sit with him and hear this single issue in September.

You are correct that the testimony referred to in my email is sponsored by Mr. Stepanian. Mr. Berdge had referred to Mr. Berger at the hearing, which is why I asked to be informed of his availability.

Amy C. Yip-Kikugawa
Administrative Law Judge
California Public Utilities Commission
415.703.5256

From: Malkin, Joseph M. [jmalkin@orrick.com]

Sent: Thursday, August 23, 2012 5:49 PM

To: Yip-Kikugawa, Amy C.

Cc: Lundy, Charlene D.; cjackson@ci.sanbruno.ca.us; Berdge, Patrick S.; austin.yang@sfgov.org; tlong@turn.org; slg0@pge.com; argay@arcassetltd.com; RegRelCPUCCases@pge.com;

kdaly@stinson.com; mchediak@bloomberg.net; ray.welch@navigantconsulting.com; R1DJ@pge.com; mrw@mrwassoc.com; dvanhoogstraten@stinson.com; anjani.vedula@db.com; jonathan.arnold@db.com; lauren.duke@db.com; John.A.Apgar@Citi.com; cleo.zagrean@macquarie.com; ted@PointState.com; jdangelo@catapult-llc.com; li@zimmerlucas.com; Jheckler@levincap.com; scott.senchak@decade-llc.com; dng@semprautilities.com; JLSalazar@SempraUtilities.com; stomkins@semprautilities.com; SHruby@semprautilities.com; MFranco@SempraUtilities.com; RCavalleri@SempraUtilities.com; RPrince@SempraUtilities.com; angelica.morales@sce.com; douglas.porter@sce.com; Francis.McNulty@sce.com; mdjoseph@adamsbroadwell.com; rkoss@adamsbroadwell.com; theresa.mueller@sfgov.org; marcel@turn.org; nsuetake@turn.org; LKL1@pge.com; NRN2@pge.com; sgs@dcbf.com; sls@aklaw.com; gburke@ap.org; bcragg@goodinmacbride.com; cem@newsdata.com; PGE Cherry, Brian; grant.kolling@cityofpaloalto.org; bstrottman@meyersnave.com; jmullan@meyersnave.com; smeyers@meyersnave.com; dmarcus2@sbcglobal.net; service@cforat.org; Mark.Gall@smud.org; atowbridge@daycartermurphy.com; wmc@a-klaw.com; dweber.nwngs@nwnatural.com; rvn@aklaw.com; Kotch, Andrew; Peck, David B.; Dorman, Elizabeth; Paull, Karen P.; Lee, Kelly C.; Bruno, Kenneth; Kito, Michele; Myers, Richard A.; Khosrowjah, Sepideh; Prosper, Terrie D.; Stanghellini, Lynn
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.

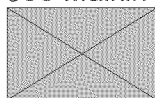
Mr. Berger's appearance here will be for an enforcement proceeding in which PG&E faces, as the Commission has said, the potential for significant penalties. The SMYS issue alone in CPSD's view amounts to more than 1 million daily violations. Under these circumstances, your ruling does not, in our view, 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 OII hearing with a new witness on one week's notice, we urge you either to allow CPSD to withdraw this issue from the Class OII 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 OII.

Sincerely yours,

Joe Malkin



Joseph M. Malkin

ORRICK, HERRINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET

SAN FRANCISCO, CA 94105

tel +1 (415) 773-5505

fax +1 (415) 773-5759

jmalkin@orrick.com

www.orrick.com

From: Yip-Kikugawa, Amy C. [mailto:amy.yip-kikugawa@cpuc.ca.gov]

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

To: Yip-Kikugawa, Amy C.

Cc: Lundy, Charlene D.; cjackson@ci.sanbruno.ca.us; Berdge, Patrick S.; austin.yang@sfgov.org; tlong@turn.org; Malkin, Joseph M.; slg0@pge.com; argay@arcassetltd.com; RegRelCPUCcases@pge.com; kdaly@stinson.com; mchediak@bloomberg.net; ray.welch@navigantconsulting.com; R1DJ@pge.com; mrw@mrwassoc.com; dvanhoogstraten@stinson.com; anjani.vedula@db.com; jonathan.arnold@db.com; lauren.duke@db.com; John.A.Apgar@Citi.com; cleo.zagrean@macquarie.com; ted@PointState.com; jdangelo@catapult-llc.com; li@zimmerlucas.com; Jheckler@levincap.com; scott.senchak@decade-llc.com; dng@semprautilities.com; JLSalazar@SempraUtilities.com; stomkins@semprautilities.com; SHruby@semprautilities.com; MFranco@SempraUtilities.com; RCavalleri@SempraUtilities.com; RPrince@SempraUtilities.com; angelica.morales@sce.com; douglas.porter@sce.com; Francis.McNulty@sce.com; mdjoseph@adamsbroadwell.com; rkoss@adamsbroadwell.com; theresa.mueller@sfgov.org; marcel@turn.org; nsuetake@turn.org; LKL1@pge.com; NRN2@pge.com; sgs@dcbsf.com; sls@a-klaw.com; gburke@ap.org; bcragg@goodinmacbride.com; cem@newsdata.com; PGE Cherry, Brian; grant.kolling@cityofpaloalto.org;

bstrottman@meyersnave.com; jmullan@meyersnave.com; smeyers@meyersnave.com;
dmarcus2@sbcglobal.net; service@cforat.org; Mark.Gall@smud.org;
atrowbridge@daycartermurphy.com; wmc@a-klaw.com; dweber.nwngs@nwnatural.com; rvn@a-
klaw.com; Kotch, Andrew; Peck, David B.; Dorman, Elizabeth; Paull, Karen P.; Lee, Kelly C.; Bruno,
Kenneth; Kito, Michele; Myers, Richard A.; Khosrowjah, Sepideh; Prosper, Terrie D.; Stanghellini, Lynn
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>
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 Zurcher
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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