

EXHIBIT B

Malkin, Joseph M.

From: Malkin, Joseph M.
Sent: Thursday, September 20, 2012 10:47 AM
To: 'Yip-Kikugawa, Amy C.'
Cc: Cagen, Robert; Gruen, Darryl; Morris, Harvey Y.; tlong@turn.org; 'Austin Yang'; smeyers@meyersnave.com; 'Jordan, Lise (Law)'; Linn, Courtney J.
Subject: I.11-02-016 Records OII

Dear ALJ Yip-Kikugawa,

This past Tuesday, we had a discussion concerning CPSD's request to enter all of PG&E's data request responses and attachments into evidence (*see* R.T. 1623-1627). When your Honor overruled PG&E's objection and ruled that you would allow all of those to be admitted, I requested that PG&E be given the opportunity to submit testimony responding to this new material. You concluded the discussion of that request with the following statement:

ALJ YIP-KIKUGAWA: I will . . . take into consideration your request. At this point I think it isn't necessary. I may change my mind within the next few days. We have at least until October 2nd, I believe you were saying, for me to make a final decision. But I will consider it, and I will mull it over, okay? [R.T. 1627]

Our discussion yesterday about the deposition transcripts that were attachments to one of PG&E's DR responses makes this issue more urgent. Over our objection, you ruled that, with the exception of the transcripts of the two witnesses who appeared at the evidentiary hearing at CPSD's request, all those transcripts will be admitted into evidence. That is 17 separate depositions, totaling approximately 5,300 pages of testimony, plus about 5,000 pages of exhibits. The deposition testimony is well more than 10 times the amount of testimony CPSD presented in direct and rebuttal combined.

As you know, this is an enforcement proceeding in which CPSD is alleging more than 35 violations spanning 80 years. Admission of this volume of testimony, exhibits, data request responses and attachments that have neither been cited by any witness nor used in the examination of any witness requires that PG&E be given an opportunity to respond. Denying an opportunity for PG&E to respond is, in our view, so inimical to American notions of due process as to shock the conscience.

We urge you either to reconsider your decision to admit this new material or promptly rule that PG&E be given a full and fair opportunity to submit responsive testimony. With the San Bruno OII evidentiary hearings about to begin, we would need a minimum of 45 days to respond to this volume of material.

Sincerely yours,

Joe Malkin



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