

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.

I.11-02-016
(Filed February 24, 2011)

**MOTION TO CLARIFY SEPTEMBER 18, 2012 ADMINISTRATIVE LAW
JUDGE RULING AND TO ESTABLISH THE REMAINING OBLIGATIONS OF
THE PARTIES IN IMPLEMENTING THAT RULING**

I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Consumer Protection and Safety Division ("CPSD") hereby files this motion. First, although PG&E was required to provide CPSD with an external hard drive (hereafter called "Toshiba Drive") containing written data responses 1 through 86, PG&E omitted multiple parts of those data responses from the Toshiba Drive. CPSD asks that the ALJ direct PG&E to provide the omitted data responses to CPSD on a second external hard drive (hereafter called "Second Drive"). Second, CPSD requests that the ALJ clarify that certain files obtained through oral data requests belong in evidence based upon the September 18, 2012 ALJ ruling addressing these evidentiary matters. Third, as detailed in this motion, CPSD asks the ALJ to specify the manner in which PG&E should be required to prepare the material on the Second Drive. Finally, as discussed in detail below, CPSD seeks certain additional rulings related to completing the electronic record for this proceeding.

II. BACKGROUND

On September 18th, 2012, the ALJ ruled that all of PG&E's Data Responses provided to CPSD up until that time would be admitted into evidence.¹ In a follow-up telephone conference with PG&E and CPSD on September 25, 2012,² the ALJ required that PG&E provide the data responses in their entirety to CPSD on an external hard drive (the Toshiba Drive). During the September 25 meeting, PG&E argued it should not be required to create copies of the Toshiba Drive, to convert the files on the Toshiba Drive to pdf/a format, or to burn the pdf/a files on the Toshiba Drive onto archival DVD's. CPSD agreed to do these things, the ALJ so ordered, and CPSD has now completed these tasks. PG&E, CPSD and the ALJ acknowledged in the September 25 meeting that the ALJ's order also meant that CPSD would be responsible for converting the files on the Toshiba Drive to pdf/a format before burning them onto an archival DVD.

Toward the end of the process of copying and converting the files from PG&E's Toshiba Drive, CPSD consultants noticed that some files appeared to be missing.³ To confirm that some files were missing, CPSD compared the files on the Toshiba Drive to the collection of data responses PG&E had provided on various hard drives, DVDs, CDs and as attachments to emails throughout the course of this investigation. In doing so, CPSD discovered that PG&E had failed to place large portions of some of the data responses 1 through 86 onto the Toshiba Drive, which CPSD had already relied upon for creating copies of external hard drives and archival DVD's, consistent with the earlier ALJ rulings.

Further, as discussed below, PG&E did not include on the Toshiba Drive data responses it had provided to two oral data requests.⁴ CPSD identified in a meeting to

¹ See Evidentiary Hearing Transcripts, September 18th, 2012, Page 1622.

² The email setting up this telephone conference is Attachment B.

³ Attachment A provides a spreadsheet that identifies data responses, or portions of data responses, provided by PG&E up until September 18, 2012, that CPSD has observed as missing from PG&E's external hard drive.

⁴ The Attachment A spreadsheet also identifies PG&E's responses to the two oral data requests that PG&E did not include on the external hard drive.

PG&E that the oral data responses were missing from the Toshiba Drive, but CPSD understood PG&E to state that the oral data responses were not required by the ALJ's ruling to be included on the Toshiba Drive.

CPSD has also recently discovered that, in some cases, PG&E assigned the same filename to different documents. Thus, the Toshiba Drive may contain a document associated with a particular file name, while other files provided by PG&E on a CD or email have the same file name but include different documents. Because PG&E assigned the same filename to two different documents, some misnamed files have appeared on the Toshiba Drive. CPSD has recently asked PG&E to review the files on the Toshiba Drive to clarify which ones are misnamed.

III. RELIEF SOUGHT

CPSD believes the relief it seeks is consistent with the ALJ's ruling that a comprehensive set of PG&E's data responses up until September 18, 2012 be compiled, archived, and admitted into evidence.

A. PG&E's Responses to Both of CPSD's Oral Data Requests Should Be Included in the Record Pursuant to the September 18, 2012 ALJ Ruling; PG&E Should Be Ordered to Provide its Responses to Both December Oral Data Requests on the Second Drive; and CPSD should be Ordered to Create and Place a Transcript on the Second Drive

CPSD made two additional oral requests during the period of discovery that included its first 86 data requests. The responses to these two requests were among the data responses PG&E had provided to CPSD at the time of the ALJ ruling on September 18, 2012 admitting all of PG&E's data responses to that date.

In response to a December 2011 oral request, made in the course of a site visit to the Emeryville records facility, PG&E provided a CD entitled "PG&E's Response to 12/20/11 and 12/21/11 CPUC Requested Documents from Emeryville Records Facility Site Visit." PG&E should be directed to produce this response on the Second Drive.

Regarding the second oral data request, PG&E originally provided the audio recording of the September 16, 2011 Brentwood control room site visit to CPSD on a CD entitled “PG&E site visit September 16, 2011.” PG&E should be directed to produce this response on the Second Drive.

CPSD is preparing a transcript of the September 16, 2011 audio recording so that parties may cite to the transcript in briefs. CPSD moves that the transcript of the site visit recording also be admitted into evidence. If this portion of the motion is granted, CPSD proposes to place the transcript onto the Second Drive.

Although the two responses to oral requests were not explicitly addressed in the earlier conferences, CPSD believes that they are encompassed by the ALJ’s September 18, 2012 ruling to admit PG&E data responses into the record and requests that the ALJ clarify that ruling to admit them.

When ruling to admit PG&E’s data responses into evidence on September 18, 2012, the ALJ stated “What I would like to do is I am going to allow CPSD to include the data responses. . .”⁵ This ruling did not exclude oral data responses, such as the ones referenced here.

When making the motion to admit PG&E’s data responses, CPSD stated, “. . .our request is based on an understanding that I think is supported by both common sense and by the law that PG&E’s data responses in full in total represent primary evidence in this proceeding.”⁶ Thus, the ALJ ruled on a motion to admit all of PG&E’s data responses, not merely responses to written data requests.

B. PG&E Should Be Required to Provide the Additional Evidence and Omitted Data Responses to CPSD on the Second Drive

Several categories of evidence were omitted from the PG&E external hard drive it provided to CPSD. These include data responses identified in the spreadsheet that is Attachment A to this motion. CPSD requests that PG&E be required to provide a Second

⁵ September 18th, 2012 transcripts, 1622:4-6.

Drive to CPSD that includes both confidential and public versions of each of the file groups described below, both in formats that can be copied, and also in formats ready to burn to archival DVD.

1. Data Responses Missing from PG&E's External Hard Drive

Attachment A to this motion provides a list of the nine data responses that CPSD has found to be absent from the PG&E external hard drive, based upon comparison of file names on the PG&E External Hard Drive with those on the data responses provided during the course of the investigation. CPSD requests that the ALJ require PG&E to include each of these omitted files in its entirety on the Second Drive. The missing data responses on the Toshiba Drive are by definition the files the ALJ's ruled to include in evidence. CPSD reasonably relied upon PG&E to follow the ALJ's September 18th ruling by producing complete and accurate records of its data responses up until September 18, 2012. PG&E's failure to follow the ALJ's ruling means that CPSD spent weeks of time and resources, only to unknowingly produce an inaccurate and incomplete product.

2. Misnamed Files on PG&E's External Hard Drive

CPSD has recently discovered that in some cases, PG&E assigned the same filename to different documents. Thus, PG&E's Toshiba Drive may contain one document associated with a filename, while files provided by PG&E on a DVD, CD, or email with the same file name are different documents. CPSD has recently asked PG&E to review the data sets to clarify which files are misnamed.

In each case where PG&E has created misnamed files on the Toshiba Drive, CPSD requests that the ALJ require PG&E to furnish, on the Second Drive, renamed files that match the ones PG&E initially provided to CPSD. CPSD also requests that PG&E provide an index that identifies each misnamed file on the Toshiba Drive and matches it to the correctly named file on the Second Drive.

The misnamed files do not comply with the ALJ's ruling because they make the files in question inaccessible. With misnamed files, parties are left with the untenable

option of opening every file in more than 100 gigabytes worth of information in hopes of finding the right one. Implicit in the ALJ's ruling that all of the data responses come into evidence is the assumption that each file be accessible by the parties. Accurate file names are necessary to provide that accessibility. Moreover, it is only with these corrections that CPSD can be certain during briefing that it is referencing from the external hard drive the same files it received during discovery.

3. Files Found by CPSD on PG&E's ECTS Database Due to PG&E Data Responses that Generally Referenced ECTS in Lieu of PG&E Providing a Substantive Answer

In some instances, PG&E data responses suggested that CPSD search the ECTS database rather than providing specific answers to questions.⁷ Based upon these data responses, CPSD found numerous relevant records in the ECTS database.⁸ CPSD believes that each ECTS record shown on the list of Attachment D was found as a result of one of PG&E's data responses referring CPSD to ECTS.⁹

Files that CPSD found in ECTS due to a data response by PG&E referring CPSD to ECTS logically fall within the ALJ's ruling that all data responses come into evidence. In these situations, it was through CPSD's efforts that it found the germane records in PG&E's ECTS system that PG&E itself could not find. CPSD then relied upon these documents to produce its testimony, even if it did not directly cite to each and every one of them. To exclude those materials from the evidentiary record would essentially be ruling that because PG&E failed to find relevant responsive records, it now can keep those records out the evidentiary record. Thus, such a ruling would essentially reward

⁷ Attachment C contains several PG&E data responses that refer CPSD to PG&E's ECTS database in lieu of providing direct responses to CPSD's question.

⁸ Separate from this motion, CPSD will soon provide Attachment D. Attachment D will be a list of MAOP numbers. MAOP numbers are unique numbers PG&E used to identify each document in its ECTS database. The list references documents CPSD found in PG&E's ECTS database.

⁹ See Attachment E, email by Margaret Felts.

PG&E's failure to organize and maintain traceable, verifiable, complete and quickly accessible records.

CPSD requests that the ALJ rule that PG&E shall provide CPSD with the ECTS documents identified on Attachment D, and include them on the Second Drive.

C. PG&E SHOULD BE REQUIRED TO FURNISH CPSD WITH A SECOND DRIVE AND SHOULD BE DIRECTED TO PREPARE THE SECOND DRIVE IN THE MANNER DESCRIBED IN THIS SECTION

PG&E should be required to produce the Second Drive containing all of the items described in subsection III. Additionally, PG&E should be required to furnish CPSD with these items on the Second Drive in a fashion that meets the following requirements.¹⁰

- The Second Drive should contain two folders at the highest level. The first folder should be entitled, "Evidence for Parties". The second folder should be entitled, "Evidence to be Archived".
- The "Evidence for Parties" folder should contain two subfolders. The first should be entitled "confidential files" and the second should be entitled "public files".
- Within both the "confidential files" and "public files" subfolders, another group of subfolders should be provided and marked by data response number. This group of subfolders should be organized numerically.
- Within the "confidential files" subfolder, PG&E should provide one complete confidential set of files to meet the requirements set forth in sections III.A and B. Each file should be placed in its appropriately marked data response subfolder.
- Within the "public files" subfolder, PG&E should provide one complete public set of files necessary to meet the requirements set forth in sections III.A and B that include

¹⁰ After checking PG&E's Second Drive for completeness and accuracy, CPSD proposes to assume the responsibility for copying additional External Hard Drives and burning Archival DVD's from PG&E's Second Drive.

PG&E's proposed redactions. The organizational structure of the "public files" subfolder should match that of the "confidential files" subfolder.

- Each file in the "confidential files" subfolder should contain an identical file in the "public files" subfolder, with the exception that the files in the "public files" subfolder contain PG&E's proposed redactions, if any.
- The folder entitled "Evidence to be Archived" should be organized in precisely the same fashion as the folder entitled "Evidence for Parties".
- The following formats in the folder entitled "Evidence to be Archived" should be converted to pdf/a format.
 - All Microsoft Word formats; and
 - All other word processing formats
 - Alternatively, CPSD requests the ALJ to instruct PG&E which file formats to convert to pdf/a format.
- All other files in the folder entitled "Evidence to be Archived" should be left in their native file format.
- PG&E should be required to provide an index identifying each file provided on this Second Drive. The index should also identify whether each file provided was omitted from the Toshiba Drive, misnamed on the Toshiba Drive, or discovered by CPSD on ECTS via reference from a data response. For each of the files that were misnamed on the Toshiba Drive, the index should match that file to the correctly named file on the Second Drive.
- PG&E should be required to provide CPSD with 20 blank external hard drives of sufficient space to hold more than twice the capacity of these files, which would accommodate a confidential and a public set.
- PG&E should be required to provide CPSD with ample gold standard archival DVD's upon which to burn a confidential and a public set of this group of files. Before providing these gold standard archival DVD's to CPSD, PG&E should ensure that they meet with the ALJ's approval for archiving purposes.

CPSD believes that these requirements will ensure that PG&E completes the set of data responses in a manner consistent with the previous ALJ rulings. Moreover, the ALJ directed that CPSD convert PG&E files to pdf/a format and CPSD complied with this ruling to the best of its ability by copying and burning onto archival DVD PG&E's incomplete set of data responses. Given PG&E's failure to provide a complete set of data responses in compliance with the ALJ's ruling on September 18, 2012, CPSD asks, through the above proposed instructions, that the ALJ require PG&E to convert all of the previously omitted files to pdf/a format. Once PG&E provides the missing files in the fashion described above, CPSD proposes to check them for completeness and accuracy. Once CPSD has done this, CPSD will copy the "Evidence for Parties" onto the supplemental external hard drives, and to burn the "Evidence to be Archived" onto Archival DVD's.

CPSD believes these proposed measures will ensure that the parties and others reviewing this proceeding can access a complete and accurate set of PG&E's Data Responses provided up through September 18, 2012 by using copies of the Toshiba Drive and the Second Drive.

IV. CONCLUSION

CPSD requests a ruling requiring PG&E to do the following:

- Provide CPSD with a Second Drive containing all data responses identified in attachment A, including the recording of the site visit to the Brentwood control room, entitled "PG&E site visit September 16, 2011;," and the CD entitled "PG&E's Response to 12/20/11 and 12/21/11 CPUC Requested Documents from Emeryville Records Facility Site Visit.;" and
- Include on the Second Drive each document identified in the list provided by CPSD in Attachment D, which will reference documents CPSD found on ECTS after being referred to look for documents by numerous PG&E data responses; and
- In each case where PG&E has created "misnamed files" on the Toshiba Drive, include on the Second Drive renamed files

that match the ones PG&E initially provided to CPSD in data responses; and

- Prepare the Second Drive in the manner articulated in section III. C. of this motion.

CPSD requests that the ALJ's ruling clarify the following:

The recording of the site visit to the Brentwood control room, entitled "PG&E site visit September 16, 2011;," and the CD entitled "PG&E's Response to 12/20/11 and 12/21/11 CPUC Requested Documents from Emeryville Records Facility Site Visit." are both responses to data requests and, as such, were admitted into evidence as part of the September 18, 2012 ruling.

CPSD requests that the ALJ's ruling require the following:

The transcript created by CPSD of the recording entitled "PG&E site visit September 16, 2011" be admitted into evidence.

CPSD requests that the ALJ's ruling require CPSD to do the following:

- Once CPSD receives the Second Drive from PG&E, check the Second Drive for compliance with the ALJ's rulings; and
- Once CPSD receives the Second Drive from PG&E, place the transcript of the recording entitled "PG&E site visit September 16, 2011" on the Second Drive; and
- Once CPSD completes checking the Second Drive for compliance with the ALJ's rulings and adds the transcript to the Second Drive, create copies of the Second Drive on the 20 external hard drives provided by PG&E for distribution to the parties; and
- Once CPSD completes making copies of the Second Drive onto the 20 external hard drives provided by PG&E, and PG&E has provided CPSD with archival DVD's that meet the ALJ's approval, burn the files on the Second Drive onto these archival DVD's; and

- Once CPSD has completed burning archival DVD's, file them pursuant to the ALJ's instructions; and
- Distribute copies of the Toshiba Drive to parties at hearings, providing confidential copies only to the appropriate parties; and
- Once CPSD completes making copies of the Second Drive, require CPSD to distribute copies of it to parties, providing confidential copies only to the appropriate parties.

Respectfully submitted,

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/s/ DARRYL GRUEN

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