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 to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.	I.12-01-007 (Filed January 12, 2012)

PG&E'S OBJECTION AND MOTION TO EXCLUDE PORTIONS OF CPSD'S REBUTTAL TESTIMONY (EX. CPSD-5)

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PG&E'S OBJECTION AND MOTION TO EXCLUDE PORTIONS OF CPSD'S REBUTTAL TESTIMONY (EX. CPSD-5)

As directed by ALJ Wetzell, PG&E sets forth its objection and hereby moves to exclude from evidence two sections of CPSD's Rebuttal Testimony (Ex. CPSD-5) and associated exhibits:

- IX.A ("Separate Board Meetings") p. 56, line 23 to p. 58, line 6, p. 59, lines 12 -17. (These pages are marked and included in Attachment A.)
- Section IX.H ("PG&E's Corporate Culture is Deeply Rooted") p. 64, line 14 to p. 66, line 28, and associated exhibits (Ex. CPSD-162 through CPSD-167). (The pages of testimony are marked and included in Attachment B.)

The portions identified are not responsive to any of PG&E's June 26th testimony; rather, they are improper additional direct testimony.

Section IX.A ("Separate Board Meetings") does not respond to anything in PG&E's testimony. CPSD's original report contained a single sentence about joint board meetings and a recommendation that PG&E should not hold joint meetings of the boards of directors of PG&E and PG&E Corporation. *See* CPSD-1 at 127 ("The same corporate culture seems to run through both PG&E Corporation and PG&E Company, as evidenced in part by the fact that the Corporation and the Company held joint board meetings.") &169 ("37) PG&E should not hold joint Company and Corporation Board of Director meetings as the two entities should have different priorities.") In Appendix A of Chapter 13 of Ex. PG&E-1, PG&E recommended rejection of CPSD's proposal. As CPSD acknowledges, PG&E's recommendation was "without comment." CPSD Rebuttal Testimony, Ex. CPSD-5 at 56.

Even though PG&E provided no substantive comment or testimony on this issue, CPSD's rebuttal testimony goes on for three pages setting forth, for the first time, a purported rationale for its recommendation. In the identified pages there is not a single cite to any PG&E testimony. By contrast, the paragraphs in this section to which PG&E does not object do refer to PG&E's testimony (*i.e.*, p. 56, lines 19-22, p. 58, lines 7-15, and p. 59, lines 1-11.) The identified pages do not constitute proper rebuttal testimony; they are improper additional direct testimony and should be excluded from evidence.

Section IX. H ("PG&E's Corporate Culture Is Deeply Rooted") is similarly improper additional direct testimony. This section elaborates on CPSD's claims about PG&E's "safety culture," adding a discussion of PG&E activities in the 1970s and 1980s.[1] This material does not respond to any of PG&E's June 26th testimony, and does not cite to any of PG&E's testimony. This is not proper rebuttal testimony; it is improper additional direct testimony and should be excluded from evidence.

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[1] CPSD's rebuttal cites Exs. CPSD-162 through CPSD-167. These are the volumes of a deposition taken in the pending San Bruno civil litigation. CPSD learned of this deposition from plaintiffs' counsel and requested it from PG&E on January 20, 2012, two months before CPSD submitted its testimony and addendum (Exs. CPSD-3 & CPSD-4).

Because it is improper additional direct, the ALJ should sustain PG&E's objection and exclude the identified portions of CPSD's testimony and associated exhibits from evidence.

Respectfully submitted,

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ATTACHMENT A

Portions of Section IX.A. (Separate Board Meetings)
p. 56, line 23 to p. 58, line 6, p. 59, lines 12 -17.

In addition, PG&E Company continues to disproportionately reward employees for PG&E Corporation's financial performance, which disincentivizes needed safety expenditures. The budgeting process remains unchanged.

CPSD believes the proposals in PG&E's Chapter 13, including such things as training and open communication, do not constitute real cultural change. The structural organization needs to change at the very top – the board meetings. PG&E's proposals in Chapter 13 alone will not de-emphasize PG&E's drive for profits over safety. Those proposals should be coupled with the following:

1) Hold **separate board meetings** and preclude members from serving on both boards;

2) **Remove** the Corporation's **financial status** as an individual criteria for the utility company **incentive plan rewards**; and,

3) Require the implementation of an asset management plan that includes **strong disincentives** for failing to comply with the plan.

A. Separate Board Meetings

CPSD recommendation #37 states that PG&E should not hold joint PG&E Company and PG&E Corporation Board of Director meetings as the two entities have different priorities. PG&E rejects this recommendation without comment. (Page 13A-12, Line 29)

~~However, PG&E's history demonstrates that PG&E Corporation cannot appropriately balance the responsibility for both pipeline safety and maximizing profits. The San Bruno explosion exposed this inherent conflict. Decisions on safety and budgeting resources were distorted with tragic results.~~

~~Unfortunately, PG&E Corporation relies solely on the profit of the regulated entity (PG&E Company) for its financial health. A publicly traded corporation that relies exclusively on growth derived from the profitability of a single regulated utility will, by its very nature, be biased towards shareholder financial interests when weighed against safety.~~

~~The Company and the Corporation each serve a conflicting purpose. In addition, they each employ persons with different backgrounds and different skill-sets. Other inherent differences include the following:~~

~~Culture of a Regulated Utility v. Culture of a Publicly-traded Corporation~~

	~~Regulated Utility~~	~~Publicly traded Competitive Corporation~~
~~Ultimate Goal:~~	~~Provide safe and reliable service at just and reasonable rates.~~	~~Maximize profits.~~
~~Answers to Whom:~~	~~Needs **regulator** approval when determining budget, expenditures, retail prices, and capital investments **to ensure the provision of safe and reliable service at just and reasonable rates**.~~	~~Needs **shareholder** approval (via Board) when determining budget, expenditures, retail prices, and capital investments **to maximize profits.**~~
~~Obligations:~~	~~Obligation to serve, therefore, can never fail.~~ ~~In general, utility is a monopoly and customers cannot switch to another provider.~~	~~Not obligated to serve. If a customer is not economic, company can choose to not serve or adjust its rates to cover the risk.~~ ~~Customers can swit ch to another provider and the company can fail.~~
~~Revenue Determination:~~	~~Regulator determines retail rates to ensure rates are just and reasonable and the company can recover its approved cost estimates.~~	~~Management proposes and board approves retail rates to: ensure a stable and/or growing client base which can be lower or competitive with competitors' rates; enable the company to cover accounting and economic costs.~~
~~Recourse in case Company cannot generate enough revenue to cover costs:~~	~~Ask regulator, and regulator can authorize rate relief to ensure justifiable costs are covered.~~	~~Can only squeeze operations expenses to a point where it impacts service and customers will switch providers.~~
~~How return on equity is generated:~~	~~Relies on regulator for rate of return on its costs to serve.~~	~~Relies on investments in portfolio to maximize profits, and relies heavily on innovation, advertising, and company image to retain and grow customer base.~~

~~If Company is run poorly or inefficiently:~~	~~Regulator can impose regulations or provide authority to recover only costs necessary to efficiently operate the utility. If additional revenue is needed to ensure efficient and reliable delivery of utility service, regulator can authorize rate relief and provide cost recovery. If necessary, regulators can issues fines, or require remedies.~~	~~Customers switch to a competitor and the company is either forced to change or fails.~~
~~Ethics:~~	~~Ensure ratepayers are provided safe and reliable service at just and reasonable costs.~~	~~All legal tools can be employed, such as, out-advertise, out-market, out-innovate, and differentiate the products to eliminate the company's competition or any entity that gets in the way of maximizing profits.~~

~~Because PG&E has not, the Commission should establish barriers or other structural changes to insulate the utility from the different priorities of PG&E Corporation. The most effective step is the separation of the two boards of directors. Currently, all board members service on both boards, except for Chris P. Johns, President of PG&E Company.~~

CPSD further recommends that PG&E focus on staffing its Company Board with safety experts. For example, PG&E holds Mr. Fred Fowler (p.13-11) out as a newly recruited board member (on both boards) who has had extensive experience working at companies with gas asset holdings. It does not state in which capacity Mr. Fowler worked; however, the press release states that Mr. Fowler holds a BA degree in Finance and his past positions include commodity trader, senior management, or on the boards of directors. There is no indication that Mr. Fowler will focus on safety, or that he would be more inclined to choose safety spending over financial objectives.

PG&E states (p.13-11) that it has established a number of committees to consider public safety, operational risks, and the progress of risk management activities. These committees appear to be toothless. There are no performance criteria identified, and no explanation of what influence they will have over Board decisions to provide a greater emphasis on public safety. PG&E established a Chairman's Ethics Council and a Safety Review Committee, but again without any indication of its power to influence board decisions. (PG&E Testimony, p.13-12.) While these committees sound good, there is no indication they can effect cultural change. Absent changing the Boards, changing budget priorities, and changing employee incentives, it is unlikely that these committees will render meaningful cultural change.

~~History shows us that profit-maximizing firms will gamble on safety to increase profits. More recently, in the 2001 energy crisis, many independent generators, commodity trading firms, and gas companies intentionally curtailed supplies and engaged in other rule-bending tactics to affect the wholesale price of electricity. The California Governor's office calculated that the behavior cost Californians over $6 billion.~~

B. Bonuses Should be Revised to Emphasize Safety Over Financial Performance

PG&E has not amended its metrics for the Long-term Incentive Plan (LTIP), which provides an incentive that links employee financial rewards to shareholder return. The changes identified in the Short-term Incentive Plan (STIP) are minor and may not result in a notable difference in employee behavior.

STIP. PG&E claims that "Safety is now the single largest factor (with the STIP), with the seven performance goals mentioned above representing 40 percent of the total." This statement is misleading. The STIP is now based on 30% financials, 30% customer satisfaction (which can easily be manipulated), and 40% a composite of seven metrics. This means that "safety" may only be one-seventh of 40%, or about 6%.

ATTACHMENT B

Entirety of Section IX.H. (PG&E's Corporate Culture is Deeply Rooted)
p. 64, line 14 to p.66, line 28.

G. PG&E Offers No Metrics to Determine Whether New Reorganization Plans will Increase Safety

The PG&E testimony identifies internal organizational changes that may be intended to address the IRP criticism that PG&E had been in a state of perpetual organizational instability for more than a decade. Although the organizational changes may or may not increase accountability, PG&E does not provide any indication that the communication of these reorganizations to staff was clearly articulated along with the reasons for them. There is no indication that the directives are any less confusing, ambiguous, and haphazard than the directives provided to employees each of the seven times the gas division was reorganized before the San Bruno disaster. In addition, PG&E does not identify criteria to measure whether the new reorganization is attaining the goal of increased accountability and an increased focus on safety.

~~**H. PG&E's Corporate Culture is Deeply Rooted**~~

~~Since at least the 1970s, PG&E deferred safety- and reliability-related expenditures for cost reasons, even when the funds were provided for in the general rate cases and approved in PG&E's own long-term plan. Specifically, PG&E officers and its Board of Directors have known of the need to test and replace Line 132 yet consciously failed to do so as part of its overall commitment to profits over safety.~~

~~In 1983, the head of Gas System Design expressed concern that projects involving code compliance, safety, and system reliability, had been deferred since 1970. This deferral had saved PG&E $17.8 million. (Supplemental exhibit Tateosian Depo Vol. I, p. 188.)~~

~~The PG&E Board had full knowledge that portions of the gas pipeline system needed to be replaced. In the late 1970's and early 1980's the head of Gas System Design expressed concern that due to questionable welding methods used prior to 1950 and recent pipeline failures, that PG&E should start looking at replacing the gas pipeline infrastructure. (*Id.*, Vol I, p. 92.)~~

~~In 1978, the head of Gas System Design recommended that a program should be initiated to test sections of pipe where there was a higher potential for failure and where there would be a high potential for injury and/or property damage should a failure occur. (*Id*., Vol IV, pp 880 and 884). He had noted that 1.7 million feet of transmission line in populated areas that had no hydrostatic test records available. (*Id*., Vol. IV p. 885.) He specifically noted that 163,213 feet, or 30.9 miles of Line 132 had not been strength tested. (*Id*., Vol IV, p. 888.) He expressed concern that the foreseeable risk of failing to commit to the replacement of aging pipelines was death, injury and property damage to those living near the pipeline. (*Id*., Vol. I, p. 92.)~~

~~The head of Gas System Design and the Vice President of Gas Operations presented to PG&E's officers and Board of the need to replace PG&E's aging gas pipelines and proposed instituting the Gas Pipeline Replacement Program ("GPRP") to facilitate the replacement. (*Id*., Vol I, p. 168.) The presentation specifically identified Line 132 as well as two other gas transmission lines that serve the San Francisco Bay Area region as needing to be replaced to be capable of operating at high pressures. (*Id*., Vol I, p. 82-85, p. 151-152)~~

~~In 1983, PG&E contracted with Bechtel to develop a pipeline replacement proposal to replace aging transmission and distribution lines. PG&E Officers and Board understood the most immediate priority for replacement of pipelines was in areas where the lines were 30 to 100 feet from residences, and that the lines in these areas should be replaced in five to seven years. (*Id*., Vol. I, p. 173-174.)~~

~~PG&E managing agents including PG&E's Management Committee and Officers were warned that pipelines installed prior to 1950 (PG&E pipe for Segment 180 had been identified with pipe held as salvage from pipe acquired as early as 1947-1948), were "suspect" and "required attention". (*Id*., Vol I, p. 104.) Bechtel recommended uncovering various segments of pipe that lacked records to validate information regarding the characteristics of the pipe. (*Id*., Vol. III, p. 3.) They also suggested that they perform field investigation work. In Bechtel's 1987~~

~~summary of the Pipeline Replacement Program history, Bechtel noted that the field investigation work, "did not proceed for reasons of practicality and costs." (*Id*., Vol. III, p. 4.) In addition, uncovering of the pipe never took place, "mainly because of cost considerations." (*Id*., Vol III, page 3.)~~

~~Bechtel also noted that PG&E's divisional personnel revealed that workmanship during the war years was of inferior quality. (*Id*., Vol. III, p. 4.) The concern of poor workmanship alone should have prompted PG&E to uncover the undocumented sections of pipeline. According to the final summary of Bechtel's contract, "uncovering of the pipe never took place, mainly because of cost considerations." (*Id*., Vol. III, p. 3.)~~

~~PG&E managing agents, including the head of Gas System Design and the PG&E Management Committee, were told that PG&E had failed to allocate adequate funds to "assure" system integrity, and that the risk of failure escalated as these facilities age. (*Id*., Vol. I, p. 112)~~

~~In addition, PG&E has overstated its necessary funding in general rate cases. The Pipeline Replacement Summary under "Financing considerations" states that the expenditures proposed in the 30-year plan for the years 1985, 1986, and 1987 are lower than the submittal for the 1986 General Rate Case and the Long-Term Plan. As far back as 1984, PG&E has been over-stating proposed expenditures for gas pipeline replacement work with little to no intention of using the funds for their intended purposes.~~

~~The ability for the Management Team to defer expenditures needed to address safety issues, combined with PG&E's over-statement of needed expenditures, may explain why, in 1984, the Manager stated, "Adoption of such a program will eliminate the previous CPUC staff criticism of not completing pipeline replacement authorized in previous rate cases." (Exhibit 118, Tateosian Depo, Vol. III,. Bechtel Memo dated October 1, 1987, Re: Pipeline Replacement Program – Historical Summary.)~~