

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)

**THE CONSUMER PROTECTION AND SAFETY DIVISION'S OPPOSITION TO
PG&E'S OBJECTION AND MOTION TO EXCLUDE PORTIONS OF CPSD'S
REBUTTAL TESTIMONY (EX. CPSD-5)**

I. INTRODUCTION

The Commission should deny Pacific Gas & Electric's (PG&E's) Motion to Exclude Portions of the Consumer Protection and Safety Division's (CPSD's) Rebuttal Testimony on the grounds that CPSD's Rebuttal Testimony is proper rebuttal testimony.

PG&E's Motion seeks to exclude CPSD's rebuttal testimony relating to a recommendation that PG&E should be required to hold separate board meetings. (Ex. CPSD-5, Rebuttal Testimony of Raffy Stepanian, Section IX(A)). PG&E Company currently holds joint board meetings with its parent company. (CPSD Recommendation #37, CPSD Report p.169.) PG&E claims that CPSD's rebuttal sets forth "for the first, a purported rationale for its recommendation." However, PG&E opposed CPSD's recommendation #37 to hold separate board meetings (Appendix A, Chapter 13 of Ex. PG&E-1), which entitles CPSD to provide further explanation as to why this recommendation is appropriate. Had PG&E not commented on the recommendation, or had accepted it, PG&E's objection would be well-grounded. By opposing it PG&E has

“opened the door” for CPSD to provide reasons why the recommendation is a good one and should be adopted.

PG&E also seeks to exclude the entirety of Section IX(H), “PG&E’s Corporate Culture is Deeply Rooted”, arguing that this portion of CPSD’s rebuttal testimony “does not respond” to any of PG&E’s testimony. However, this section responds directly to the heart of PG&E’s defense, which is that PG&E acted “unknowingly and unintentionally”¹. CPSD’s direct testimony was not focused on PG&E’s knowledge of the unsafe conditions existing on Segment 180, because of the long-standing rule that public welfare offenses are strict liability offenses. (D.97-10-063.) Strict liability means that no proof of intent is required – a violation occurs if the conditions are met, regardless of whether PG&E knew or not. However, PG&E chose to make the central theme of its testimony its purported lack of knowledge, and so it is well within CPSD’s rights to provide rebuttal testimony that demonstrates: a) PG&E’s alleged lack of knowledge is not a defense; and b) PG&E’s alleged lack of knowledge is not credible, because there is abundant evidence that it had knowledge of the unsafe conditions, or should have known, based on warnings.

CPSD’s Rebuttal Testimony Section I(B) “Mental State Requirement” demonstrates how PG&E is raising an inappropriate mental state defense to violations. CPSD’s Rebuttal Testimony draws from two primary sources to prove that PG&E’s claims of ignorance are not credible, which are discussed below.

II. PG&E CHOSE TO MAKE ITS PURPORTED LACK OF KNOWLEDGE A CENTRAL THEME IN ITS TESTIMONY

PG&E’s references to its mental state are repeated throughout its testimony. Early on, the theme is stated by Ms. Yura in Chapter 1, when she says “(w)e now know that the cause” of the explosion was the missing interior seam weld, but “we have no records” where it came from, nor any records “showing pre-service hydro-test.” (PG&E-1, p.1-3.) Mr. Harrison in Chapter 2 reiterates PG&E’s defense: he states that PG&E “unknowingly

¹ References to PG&E’s lack of knowledge are throughout its testimony. See, e.g., Ex. PG&E-1, pp. 2-1, 2-4, 2-5, 2-6, 2-7, 4-1, 4-12, 4-27, etc.

and unintentionally installed a piece of pipe that was missing an interior long seam weld”; and that it was an “unknowing mistake.” The references go on: “Unknown to PG&E...” (p.2-3); “There is no indication or evidence that PG&E ever had actual knowledge” (p.2-4); “PG&E did not know any of this until the release of the NTSB results.” (p.2-4); “If the pups were delivered welded together and double wrapped, PG&E would not have readily known about the existence or length of the pups.” (p.2-7).

Ms. Keas in Chapter 4 picks up on the theme and repeats it: “CPSD’s claims are based on an ideal view of what an integrity management program can do – a view informed by the knowledge we have today from the San Bruno accident.” (p.4-1); “As we now know...” (p.4-12); “...prior to the San Bruno incident, was not known by us or through industry experience...” (p.4-17); “CPSD’s arguments, however, are made with the benefit of hindsight provided by the San Bruno accident...” (p.4-17).

PG&E chose to make its purported lack of knowledge a central theme in its testimony. Therefore, it is permissible for CPSD to point out first, that CPSD is not required to prove that PG&E intended or knowingly violated the law; and second, there is evidence that PG&E did know, or should have known, about the unsafe conditions, had it attended to warnings delivered years in advance.

III. CPSD IS NOT REQUIRED TO PROVE INTENT

The first part of CPSD’s rebuttal with regards to PG&E’s “lack of knowledge” argument is that violations of the applicable gas pipeline construction and maintenance regulations are strict liability. It is well-established that public welfare offenses are strict liability offenses unless they specifically state a different mental state requirement. (D.97-10-063.) Staff is not required to prove ‘negligence’ in order to establish that a violation of a safety-related law, rule, or regulation occurred. (D.04-04-065, dealing with GO 95 and GO 128 safety violations.) Therefore PG&E’s intent is not a required element of CPSD’s case in chief.

IV. DESPITE PG&E'S CLAIM OF IGNORANCE, PG&E SHOULD HAVE KNOWN, AND PROBABLY DID KNOW, OF THE EXISTENCE OF THREATS TO ITS GAS PIPELINES

Specifically in response to PG&E's claims that it had no knowledge and thus cannot be faulted or held in violation, CPSD's Rebuttal Testimony first reiterates a point made in its direct testimony, Chapter IX, that organizational impacts due to spending reductions were not important to PG&E's management, thus making the chances of an accident far more likely². CPSD's rebuttal need not repeat arguments made in its direct testimony.

CPSD's rebuttal testimony describes and summarizes evidence uncovered as part of the San Bruno investigation that pertains to what PG&E knew, and when it knew it³. The evidence is from two primary sources: an interview with a former PG&E executive, and a memo from the Bechtel Corporation, a contractor hired by PG&E.

The former PG&E employee is Mr. Charles Tateosian, who worked for PG&E for approximately 40 years. He was the head of PG&E's gas system design. Many of his statements go directly to the issue of what PG&E knew. Without repeating CPSD's Rebuttal Testimony in its entirety, here are some of the highlights of Mr. Tateosian's testimony described therein (including multiple exhibits, CPSD-162, 163, 164, 165, and 166, which PG&E seeks to exclude):

- In the late 1970's and early 1980's Mr. Tateosian 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. (Ex. CPSD-165, Tateosian Deposition, p.93.)
- In 1978, he 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. (Ex. CPSD-167, p.880 and 884.)

² The rebuttal testimony states: "PG&E deferred safety- and reliability-related expenditures for cost reasons". (Ex. CPSD-5, p.64.)

³ PG&E's Motion points out that CPSD obtained this evidence from PG&E two months prior to filing its testimony; however, CPSD obtained almost all of its evidence from PG&E in the form of data requests. Whether or not CPSD had the evidence prior to filing its testimony is irrelevant to the issue of whether the evidence is proper rebuttal.

- He noted that 30.9 miles of Line 132 had not been strength tested. (*Id.*, p.888.)
- He warned PG&E management that pipelines installed prior to 1950 were “suspect” and “required attention”. (Ex. CPSD-165, p.104.)
- He reported his concerns to PG&E’s Vice President of Gas Operations. (*Id.*, p.94.)

In 1983, PG&E contracted with Bechtel Corporation to develop a pipeline replacement proposal to replace aging transmission and distribution lines. (CPSD-5, p.65.) Bechtel’s memo⁴ noted:

- PG&E’s divisional personnel revealed that workmanship during the war years was of inferior quality. (Ex. CPSD-164, attachment “Exhibit 118”.)
- Bechtel’s field investigation work uncovering pipe never took place “mainly because of cost considerations.” (Ex. CPSD-164, p.750.)
- “The problem of missing records caused some difficulties during the data collection process.” (Ex. CPSD-167, p.921.)

V. THERE IS NO LEGAL SUPPORT FOR PG&E’S CLAIM THAT THIS IS “IMPROPER ADDITIONAL DIRECT TESTIMONY”

PG&E has no legal grounds for its claim that CPSD’s Rebuttal Testimony is “improper additional direct testimony”. (PG&E Motion, p.1.) PG&E cites no Commission decision or rule that provides guidance as to the legal standard for improper rebuttal testimony. However, Commission Rule 13.8(b) provides guidance for what to do when additional testimony is introduced, stating that the sponsoring party must show “good cause why the additional testimony could not have been served with the prepared testimony or should otherwise be admitted.” (Emphasis added.)

CPSD has stated its good cause as described above why evidence of PG&E’s knowledge was included in its rebuttal testimony but not its direct testimony. CPSD has

⁴ It should be noted that CPSD already moved Bechtel’s memo in the record in I.11-02-019, CPSD’s Exhibit 55. The prejudice to PG&E of allowing a reference to the memo in this proceeding is therefore minimal, if at all.

described why this additional evidence “should otherwise be admitted”, because it goes to the heart of PG&E’s defense, which is that it did not know of the dangers lurking in its pipelines.

VI. CONCLUSION

PG&E chose to make its state of mind a central element of its defenses in this proceeding. Therefore, it is proper for CPSD to provide evidence in rebuttal showing that PG&E should have known, and probably did know, of the dangerous conditions due to warnings relating to lack of testing and older, problematic pipelines and missing records. The evidence with regards to this, described above, is therefore proper rebuttal testimony.

Respectfully submitted,

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