

**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)

**PACIFIC GAS AND ELECTRIC COMPANY'S
RESPONSE TO CPSD' MOTION TO CLARIFY SEPTEMBER 18, 2012
ADMINISTRATIVE LAW JUDGE RULING, ETC.**

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I. INTRODUCTION

CPSD's motion seeks three categories of relief, each of which should be denied.¹ First, CPSD wants to put more evidence into the record that has not previously been identified, including yet-to-be-disclosed documents its consultant Margaret Felts downloaded from PG&E's ECTS database. This and other requests in the motion compound the constitutional error CPSD introduced when it sought and obtained the September 18 ruling, permitting it to place all of PG&E's Responses to Legal Division and CPSD Data Requests (DRs) 1 through 86 into the record in this action.²

Second, CPSD complains that PG&E omitted items in late September when PG&E produced what CPSD calls the "Toshiba Drive" containing confidential and public versions of its responses to CPSD DRs 1 through 86. But most of what CPSD terms "omitted" items were not omitted at all. Those few items that were in fact missing (out of tens of thousands produced)

¹ Pursuant to *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964), PG&E expressly reserves its federal constitutional and any other federal claims and reserves its right to litigate such claims in federal court following any decision by the Commission, if necessary.

² That ruling is the subject of PG&E's December 17, 2012 motion for reconsideration or, in the alternative, for leave to submit responsive testimony.

have now been provided in a revised Toshiba Drive PG&E sent on December 21, 2012. In fact, PG&E has now provided CPSD with a complete index of every PG&E response in DRs 1 through 86, mapped to the files on the revised Toshiba Drive. From CPSD's December 26 motion, it would appear that CPSD has not reviewed this revised Toshiba Drive.

Finally, CPSD seeks relief from its own excesses. Having served 775 data requests in this proceeding (not including numerous subparts), and having made no effort to identify (much less narrow) the discovery it eventually will marshal in support of its case, CPSD struggles to manage and arrange the information. With its present motion, CPSD renews its bid to enlist PG&E to do its work. The assigned ALJ has consistently made clear that CPSD needs to do this work itself. Nothing has changed that warrants revisiting this issue.

II. BACKGROUND

Following issuance of the OII, the Commission's Legal Division and CPSD issued 775 data requests (many containing multiple subparts). Many of the data requests sought broad categories of information reaching back 50 or more years. PG&E's responses to these requests contain over 46,000 individual documents totaling more than 175 gigabytes of information. In support of its written reports and testimony, CPSD marshaled only a sliver of this information. In total, CPSD's six original, supplemental and rebuttal reports cite to 140 of PG&E's 775 data responses. CPSD has used one additional data response in cross-examination of PG&E witnesses. *See Ex. CPSD-43.*

On September 18, and over PG&E's objection, the assigned ALJ admitted into evidence the entirety of PG&E's responses to DRs 1 through 86 – the 775 data responses (and subparts) and attached documents. R.T. 1571:9-1582:21; 1620:24-1628:5. Presently pending before the ALJ is a motion brought by PG&E asking her to reconsider her prior ruling. *See PG&E's Motion for Reconsideration of Ruling Admitting Data Responses and Civil Deposition*

Transcripts Into Evidence Or, in the Alternative, For Leave to Submit Responsive Testimony, filed December 17, 2012 in I.11-02-016.³

In connection with this September 18 ruling, the ALJ instructed PG&E to provide redacted and confidential versions of PG&E's data responses on a single external hard drive so that CPSD could submit a publicly-available version and refer to the data responses in post-hearing briefing. PG&E complied by providing a Toshiba Drive to CPSD on September 28, 2012. Declaration of Lise Jordan ("Jordan Decl.") at ¶ 2. For more than two months, PG&E heard nothing from CPSD about the sufficiency of the Toshiba Drive. Instead, CPSD took its complaints to the ALJ. By email dated November 16, 2012, Mr. Gruen advised the ALJ that, seven weeks after receipt from PG&E, CPSD had begun to review the hard drives to, among other things, "ensure they are not missing any files PG&E provided us in data responses during the course of the investigation." Jordan Decl. at ¶ 8, Ex. F. In an email dated December 7, 2012, Mr. Gruen wrote to the ALJ to "update" her on the items that were "missing" from PG&E's Toshiba Drive. He explained that he had sent a list of the "missing" items to PG&E, and that he was working to determine if any additional group of documents "found as part of the discovery process" were also "missing" from the Toshiba Drive. *Id.*

Mr. Gruen's reference to having sent PG&E a list of missing items is to an email he sent the previous day, on December 6.⁴ In an email sent that day, Mr. Gruen wrote to PG&E, in part:

³ The above facts are drawn from PG&E's Motion. PG&E urges the assigned ALJ to consider CPSD's motion in conjunction with PG&E's. PG&E's motion, if granted, would moot (or at least substantially narrow) CPSD's present motion seeking to clarify the September 18 ruling.

⁴ CPSD maintains that these conversations with the ALJ were not "ex parte" communications within the meaning of the Commission's Rules of Practice and Procedure. At least some of them were. For example, when a party asks the ALJ assigned to an enforcement proceeding to confirm the meaning of a contested evidentiary ruling (as CPSD did explicitly in a November 16, 2012 email) it engages in an impermissible ex parte communication.

As you may remember, the ALJ instructed PG&E to provide the CPSD record keeping team with an external hard drive consisting of data responses 1 through 86. In the attached list, CPSD has identified a group of things that PG&E provided CPSD in its first 86 data responses during the course of the investigation, but that are missing from the external hard drive. In addition to the attached list, CPSD has a group of files downloaded from ECTS that were part of the discovery process. For shorthand, I refer to the incomplete set of data responses 1 through 86 as “Data Responses”, and the missing items from the hard drive and group of files downloaded from ECTS as “Missing Items”.

The ALJ is expecting me to update her on the status of the Missing Items tomorrow. Before talking with her, I wanted to communicate with you beforehand and inquire as to PG&E’s willingness to remedy these deficiencies.

See Jordan Decl. at ¶ 3, Ex. A.

Attached to CPSD’s December 6 email was a list of the supposedly “Missing Items.” *See* Jordan Decl. at ¶ 3, Ex. A excel attachment. PG&E reviewed the list and concluded that many of the items that had been characterized as “missing” were not missing. They were items outside PG&E’s Responses to DRs 1 through 86, and thus outside the ALJ’s September 18 ruling. For example, CPSD characterized as a Missing Item: “Gas Transmission System Records OII/Response to 12/20/11 and 12/21/11 CPUC requested documents from Emeryville records facility site visit.” *Id.* at ¶ 3, Ex. A excel attachment at line 23. This list includes documents that CPSD gathered in the course of a site visit to PG&E’s Emeryville records storage facility in December 2011. They were not responsive to any of the 86 Data Request sets. CPSD also characterized as “missing” documents its consultant, Margaret Felts, downloaded from PG&E’s ECTS. As the body of Mr. Gruen’s December 6 email makes clear, CPSD understood that these yet-to-be-disclosed ECTS documents were not included in PG&E data responses to DRs 1 through 86, but rather were items gathered by Ms. Felts as “part of the discovery process.” *Id.* at

¶ 3, Ex. A (“In addition to the attached list, CPSD has a group of files downloaded from ECTS that were part of the discovery process.”).

PG&E promptly responded to CPSD’s December 6 email and set up a conference call to discuss PG&E’s questions and CPSD’s concerns. Jordan Decl. at ¶ 3, Ex. A. As a result of the call, lists of action items were drawn. One of CPSD’s action items was to provide a complete list of the ECTS-related documents referenced during the course of the call. CPSD has not completed this task. As it acknowledges in a footnote to its motion, it has yet to provide a list of MAOP-numbered documents it found in PG&E’s ECTS database. *See* CPSD’s Motion to Clarify September 18, 2012 Administrative Law Judge Ruling and to Establish the Remaining Obligations of the Parties in Implementing that Ruling (“CPSD Motion”) at 6, n.8.⁵ It provided a list of ECTS numbers during its call with PG&E, but apparently this list no longer reflects the ECTS documents it seeks to add to the record.⁶

PG&E also had a list of things to do coming out of the December 10 conference call. It addressed its list of items and provided CPSD with an update explaining what it had done. Jordan Decl. at ¶ 6, Ex. D. In addition, on December 21, 2012, it sent CPSD a revised Toshiba hard drive containing PG&E’s data responses and an index to its contents. *Id.* at ¶ 7, Ex. E. As the Table in Section III.B.1 below reflects, the index included reference to documents that have been added to the revised Toshiba hard drive based on the parties’ recent conversations and

⁵ The afternoon of January 4, 2013, and just as this responsive pleading was being finalized, CPSD provided a 42-page list of over 1,900 MAOP documents it seeks to add to the record. PG&E did not have time to review the list prior to submitting this response.

⁶ In the midst of the conference call, CPSD forwarded a list of ECTS document numbers that CPSD said it wanted to include on the Toshiba Drive. Jordan Decl. at ¶ 4, Ex. B. PG&E questioned where these numbers came from because it had not seen them before. *Id.* at ¶ 12, Ex. I. In a December 28, 2012 data response, CPSD stated that these MAOP numbers were from ECTS but were not ones that Ms. Felts relied upon in forming her testimony. *Id.* As things stand, PG&E still does not have the list of MAOP-numbered ECTS documents that CPSD seeks to have included on the Toshiba Drive.

based on a few instances where, during the development of this index, PG&E identified other missing items. *Id.* The Index provides a complete list and mapping of PG&E's Responses to DRs 1 through 86 to their respective folders on the hard drive. Additionally, PG&E provided information about each individual data response (1 through 86) indicating the medium in which it had previously been provided. In cases where the medium was a CD, PG&E identified the label of the CD.

CPSD has not acknowledged receipt of PG&E's December 21, 2012 production of the indices or the revised Toshiba hard drive. Its motion makes no mention of them. Instead, the motion attaches the same list of "missing" items that CPSD's consultant sent shortly after the December 10, 2012 conference call.

III. ARGUMENT

A. CPSD Should Not Be Permitted to Further Supplement Its Evidence With Materials Provided In Response to So-Called "Oral" Data Requests.

CPSD asserts that in the course of pre-hearing discovery, it made two oral requests of PG&E that were in addition to DRs 1 through 86. One "oral" data request sought a copy of a partial audio recording the City and County of San Francisco (not PG&E) made of a September 2011 site visit to PG&E's Brentwood gas control facility. Another request sought copies of documents that CPSD reviewed in the course of December 2011 site visits to PG&E's Emeryville records storage facility. *See* CPSD Motion at 3-4.

Isolating an excerpt from the Reporter's Transcript of the September 18 hearing, CPSD reasons that PG&E's responses to CPSD's "oral" requests were included within the responses contemplated by the assigned ALJ's September 18 ruling. It writes:

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.” [footnote omitted].⁷ Thus, the ALJ ruled on a motion to admit all of PG&E’s data responses, not merely responses to written data requests.

CPSD Motion at 4. In the hearing transcript, however, the above-language was preceded by statements Mr. Cagen made defining the scope of CPSD’s motion. This portion of the transcript, which CPSD omits, makes clear that CPSD’s motion addressed only PG&E’s responses to DRs 1 through 86:

Our request, which apparently PG&E opposes, is that all PG&E data responses provided to CPSD in response to CPSD data requests be entered into the record of this proceeding and placed in evidence. I believe that’s 86 or 87 or thereabouts data response – or responses to 86 or 87 data requests of CPSD. There are certainly multiple subparts to the responses and to the data requests themselves. I’ve heard PG&E say about 1200 of them. We have no reason to dispute that figure. That sounds accurate.

Now, 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 response in full in total represent primary evidence in this proceeding.

R.T. at 1571:17-1572:5. Restored to context, the transcript CPSD relies upon contradicts its position, not supports it.

If there were any doubt about what relief CPSD sought and obtained in the September 18 ruling, it is resolved by numerous statements CPSD has made characterizing that ruling. In a letter addressed to PG&E dated December 13, 2012, Mr. Morris referred to that ruling as specifically addressing PG&E’s responses to DRs 1 through 86:

The emails and conversations reflect the difficulty CPSD was having in providing these enormous exhibits. These communications occurred after ALJ Yip-Kikugawa’s ruling on September 18, 2012 [citations omitted] granting CPSD’s request to put the entire group of PG&E’s Data Responses to *CPSD Data*

⁷CPSD states the quoted language appears at R.T. 1622:4-6. See CPSD Motion 4, n.5. It does not. It appears at R.T. 1572:1-5.

Requests 1 through 86 (subject to redactions for the public filing) into the record.

Jordan Decl. at ¶ 8, Ex. F (italics added). The record of conversations and emails between CPSD and the assigned ALJ confirm that CPSD has (until now) consistently defined the September 18 ruling to address only PG&E's responses to DRs 1 through 86. *Id.* (CPSD's Response to PG&E's DR 14-Q1 (in which CPSD again refers to the assigned ALJ's September 18 ruling as addressing the admission of PG&E's data responses "from numbers 1 through 86")); *id.* (CPSD's Response to PG&E DR 14-Q2, Attachment (November 19, 2012 email from Mr. Gruen to assigned ALJ: "As we are still doing discovery, we may also need to provide supplemental storage devices with PG&E's data responses to Data Requests 87 onward. This assumes your guidance about entering all data responses into the record applies to these as well. Is this an accurate reading of your ruling?")); *id.* (CPSD Response to PG&E DR 14-Q2 (November 15, 2012 email from Mr. Gruen to the assigned ALJ in which he identifies the information to be included on the archival DVDs as "PG&E's response to date to CPSD Data Requests 1 through 86" and documents referenced by CPSD's testimony)). Mr. Gruen's December 6, 2012 email to PG&E similarly characterizes the ALJ's September 18 ruling as addressed to PG&E's responses to CPSD DRs 1 through 86. *Id.* at ¶ 3, Ex. A ("As you may remember, the ALJ instructed PG&E to provide the CPSD record keeping team with an external hard drive consisting of data responses 1 through 86").

To the extent that CPSD argues that its two "oral" requests are within the scope of its prior motion, and thus within the scope of the assigned ALJ's September 18 ruling, CPSD mischaracterizes the record. Its motion should be denied.⁸

⁸CPSD offers no other justification for admitting into evidence the responses to the "oral" requests. Even if it had offered an additional justification, PG&E would oppose the admission of the responses for the reasons set forth in Section III.B.

B. CPSD’s Request To Further Supplement Its Case Invites the Assigned ALJ to Compound An Already Clear Due Process Violation.

1. PG&E Addressed CPSD’s Legitimate Concerns About Missing Items By Re-sending a Revised Toshiba Drive on December 21, 2012.

CPSD maintains that several categories of DR responses identified in Attachment A to its present motion fell within the scope of the ALJ’s ruling, but were omitted from the Toshiba Drive. *See* CPSD Motion at 5 and Attachment A thereto. Its concerns are belated, unfounded, and/or addressed by PG&E’s December 21, 2012 revised drive.

The table below summarizes CPSD’s Attachment A and provides PG&E’s response to each line of the attachment listing CPSD’s complaints about missing documents. Of the many items that CPSD complained were “missing,” only two were in fact missing. CPSD’s other complaints are not well taken:

Attachment A Line #	Number of CPSD Data Request	Summary Description of Data Request(s)	PG&E’s response
Lines 1-12	29	DR 29 sought PG&E responses to certain data requests made outside the Records OII.	On July 18, 2012, PG&E advised CPSD that it was not redacting data responses provided outside this proceeding. Jordan Decl. at ¶ 10, Ex. G. The effort to do so would have greatly complicated the multi-month redaction effort. CPSD never voiced objection.
Line 13	N/A	CCSF audio recording of 9/16/11 site visit at PG&E’s Brentwood facility.	<i>See</i> PG&E’s Response set forth in Section A above.

Lines 14-16	DR 7		DR 7 allowed PG&E to reference materials PG&E had already provided to CPSD. PG&E's DR response references those prior productions (and in the case of NTSB data responses provided copies for CPSD's convenience). There is nothing more to include. <i>See</i> Jordan Decl. at ¶ 11, Ex. H.
Line 18	DR 65-Q2	Two videos plus text and attachments were missing,	PG&E provided the 2 missing attachments (2 emails) on its December 21, 2012 Toshiba Drive. The videos cannot be redacted without altering the videos, and therefore are not on the hard drive.
Line 19	CPSD referenced to DR 29. ⁹	<i>See</i> CPSD's Attachment A	During the December 10 conference call, Mr. Gruen agreed to provide clarification regarding this item in its spreadsheet. PG&E has not received clarification to date.
Line 20	DR 20	DR 20 sought PG&E responses to other DRA and CPSD (no Records OII) data requests)	The "missing" files are on the Toshiba Drive at DR51 Q6-Q8.
Line 21	N/A	Line 21 references the "oral" requests for documents CPSD made in the course of its December 21-22, 2011 site visit to PG&E's Emeryville records storage facility.	<i>See</i> PG&E's Response set forth in Section A above.
Line 22	DR 25	CPSD believed attachments were missing from this response.	PG&E has confirmed that the attachments are not missing.

⁹ Line 18 of CPSD's Attachment A to its motion references to DR 29. This likely is a mistake. The summary description in CPSD's Attachment A does not identify items that would have been responsive to DR 29. The items instead appear to have been responsive to DR 64, Q.3. That DR sought PG&E responses to all data requests made in I.12-01-007. In either event, PG&E is unclear about what CPSD is requesting.

Line 23	DR 78	These DRs relate to audio recordings and so called “Verint Agreement.”	The audio recordings were not placed on the Toshiba Drive because they could not be redacted. The Verint Agreement is on the hard drive but placed in the wrong DR 78 folder (it is in DR 78-Q5 when it should be in DR 78-Q4). That has been corrected on the December 21, 2012, hard drive.
Line 24	DR 4	In this DR Response, PG&E offers to provide CPSD with direct ECTS access.	The documents CPSD seeks to introduce (they have yet to be identified) were not produced by PG&E in response to this DR or any other DR; they were independently identified by CPSD’s consultant as a result of PG&E providing her with access to its electronic database.

CPSD’s motion largely does not address the facts set out above. To summarize, several items listed in Attachment A as missing are outside the scope of the September 18 ruling. Others refer to items PG&E explained in July 2012 that it was not including in the redaction effort. The few items that can accurately be characterized as missing have been included in PG&E’s December 21, 2012 revised drive.

2. CPSD Has Never Previously Raised Concerns About “Misnamed” Files on the Toshiba Drive and Its Motion Does Not Identify What Files Are “Misnamed.”

CSPD asserts that it recently discovered that some of the files contained on the September 28 Toshiba Drive are “misnamed.” Motion at 5-8. Without specifying which files it believes are misnamed, it asks the assigned ALJ to order: “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[.]” *Id.* at 9-10.

At no time prior to filing the Motion did CPSD raise any concern about misnamed files. While this is not a discovery issue per se, we believe that like a discovery issue, it would benefit from the parties meeting and conferring before raising the issue with the assigned ALJ. *Cf.* Rules of Practice & Procedure 11.3. Among other things, PG&E does not know which files (among the more than 45,000 contained on the Toshiba Drive) CPSD believes are misnamed. PG&E therefore requests that the ALJ deny the requested relief without prejudice to CPSD's right to renew the motion if it cannot resolve the issue after conferring with PG&E.

3. Undisclosed Documents That Margaret Felts Identified During Her Searches On ECTS Are Not PG&E Discovery Responses and Are Not Now Admissible Without Further Violating Due Process.

CPSD seeks to admit documents it found in PG&E's ECTS database. CPSD Motion at 6, n.8. It does not identify the ECTS documents it seeks to admit and have placed on a new Toshiba Drive, but promises to "soon" provide a list of them as Attachment D to its motion. *Id.* CPSD maintains that it "relied upon these [yet-to-be disclosed] documents to produce its testimony, even if it did not directly cite to each and every one of them." *Id.* at 6.¹⁰

CPSD's request to admit the ECTS documents fails for several reasons. First, CPSD offers an impermissible justification for granting relief:

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 of the evidentiary record. Thus, such a ruling would essentially reward PG&E's failure to organize and maintain traceable, verifiable, complete and quickly accessible records.

Id. at 6-7. An urge to punish (or not "reward") PG&E is not a cognizable reason to admit or exclude evidence. And, the assertion that PG&E's historic records were not "traceable,

¹⁰ In fact, it did not cite to any of them when asked in discovery to identify documents Ms. Felts relied upon in forming the opinions in her rebuttal testimony.

verifiable and complete” is both unproven and irrelevant to this motion (and it is irrelevant to any determination of the ultimate merits of CPSD’s allegations).¹¹

But even assuming *arguendo* that CPSD had offered a tenable justification for admitting the ECTS documents, it has not explained how the documents can come into evidence without further violating PG&E’s due process rights. *See, e.g., Rosenblit v. Superior Court*, 231 Cal. App. 3d 1434, 1446-48 (1991) (“Fair procedure would require disclosure of evidence forming the basis of the charges” in administrative proceeding to revoke physician’s hospital privileges). Documents taken from ECTS that are relevant to CPSD’s opinions should have been disclosed in its written reports and testimony. These documents should also have been disclosed in response to prior data requests PG&E sent that sought this kind of information. *See* Jordan Decl. at ¶ 13, Ex. J and ¶ 5, Ex. C (CPSD’s Responses to PG&E DR 04, Q 13, 14, 20, 21, 22, and 25; DR 07-Q1; DR 13-Q01).¹² And they should have been disclosed during Ms. Felts’ cross-examination where PG&E questioned Ms. Felts closely about her reliance on documents she reviewed in ECTS. *See, e.g.,* R.T. 221-222; R.T. 325-326. CPSD cannot claim to have relied on documents in ECTS, and on that basis seek to admit them, when it did not previously identify those documents in its written reports and testimony, in response to pertinent discovery requests, or in response to cross-examination questions aimed at eliciting just such information.

¹¹ “Traceable, verifiable and complete” is not a records standard that can be applied to judge PG&E’s pre-September 2010 records practices without violating due process. *See F.C.C. v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317-18 (2012) (FCC enforcement order violated due process because it was predicated on a definition of indecency that the agency had not communicated until after the conduct occurred).

¹²CPSD’s response to PG&E DR 07-Q1 indicated that it included an MAOP list drawn from ECTS. After diligent search, PG&E has not found that attachment. It is unclear whether the attachment CPSD meant to provide as part of its response to DR 07-Q1 (but did not) is the same list that CPSD provided for the first time on December 10, 2012, or whether it is the same or similar list to the one CPSD promises to provide but has yet to do so.

CPSD's effort to treat its yet-to-be disclosed ECTS documents as though they form part of PG&E's written data responses to DRs 1-86 also fails. *See* CPSD Motion at 6 (where CPSD contends that it found the ECTS documents "as a result of one of PG&E's data responses referring CPSD to ECTS"). Near the outset of the discovery process, and in response to a broad data request, PG&E took the unprecedented step of offering CPSD internet access to a real-time data base of pipeline records. *See, e.g.*, CPSD's Motion, Attachment C, CPUC DR 004-Q16. The examples CPSD provides of data responses in which PG&E referred to ECTS do not support its position. In some instances, PG&E responded to a data request by referring generally to ECTS while at the same time providing the specific information that CPSD sought. *See* CPSD Motion, Attachment C (PG&E's Response to DR 13-Q06 & DR 13-Q09). In other instances, PG&E described ECTS's functioning in general terms. *See id.* (PG&E's Response to DR 016-Q08 & CPUC DR 016-Q12). In either event, PG&E's references to ECTS do not make as yet undisclosed ECTS documents that CPSD found on its own into part of a PG&E written data response. PG&E provided unprecedented access to a real-time data base to assist CPSD. It made reference to ECTS in data responses for the same reason. This kind of assistance should not now be cited as a justification for supplementing CPSD's case at this late hour.

C. CPSD's Bid to Enlist PG&E To Clean Up Its Exhibits Should Be Rejected.

In Part III.C of its motion, CPSD lists twelve requirements it has for any revised Toshiba Drive PG&E may be ordered to produce. *See* CPSD Motion at 7-8. It wants PG&E to arrange the material into different folders and subfolders with various labels and designations. CPSD even asks that PG&E be required to provide the blank external drives on to which the information can be copied.

We have covered this ground before. During a September 25 conference call, the ALJ made clear that the obligation to put its exhibits together rests with CPSD. In her

communications with CPSD after the September 25 conference call, the ALJ has consistently pressed CPSD to complete this work. If CPSD was having trouble managing and arranging discovery, CPSD should have taken PG&E up on its offer – made more than a year ago – to have PG&E technical staff or a PG&E-paid consultant help CPSD. Given the unprecedented volume of data CPSD has tried to place at issue in this proceeding, all of the parties (and soon the ALJ) face challenges managing information.

IV. CONCLUSION

CPSD’s case relies on undisclosed evidence. It invited constitutional error when it persuaded the assigned ALJ to admit this evidence in bulk. The ALJ should not compound the error by acceding to CPSD’s renewed demands to admit still more late evidence, some of which still has not been identified months after its witnesses testified. Nor should she accede to CPSD’s demands to conscript PG&E to help organize CPSD’s case against PG&E.

Respectfully submitted,

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