

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)

Order Instituting Investigation on the Commission's Own Motion into the Operation 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)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with Higher Population Density.

I.11-11-009
(Filed November 10, 2011)

**MOTION FOR PUBLIC DISCLOSURE OF CONFIDENTIAL
TESTIMONY AND RELATED DISCOVERY RESPONSES REGARDING
PG&E’S ABILITY TO ABSORB FINES AND OTHER COSTS RELATED
TO ITS GAS TRANSMISSION OPERATIONS**

I. INTRODUCTION

Hearings are scheduled for March 4 and 5, 2013 on expert testimony concerning the financial capacity of Pacific Gas and Electric Company (PG&E) to absorb fines and other non-recoverable costs that the Commission may impose in these three proceedings. In preparation for these hearings, Administrative Law Judges (ALJs) Yip-Kikugawa and Wetzell instructed the parties by email on February 19, 2013:

“If any party opposes any portions of testimony that have been labeled confidential, it should file a motion stating its objection. Motions shall be filed no later than February 25, 2013. In the absence of any such motions, parties will have waived any objection to the confidentiality determinations.”

The ALJs also indicated their preference for keeping the hearings public (i.e. avoiding closed hearings on confidential portions of testimony).

Pursuant to those instructions and to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) files this motion requesting an order authorizing public disclosure of portions of testimony that have been designated as confidential pursuant to Public Utilities Code Section 583.

**II. TESTIMONY ADDRESSING PG&E’S FINANCIAL ABILITY TO
PAY PENALTIES SHOULD BE MADE PUBLIC**

A. What has been designated as confidential in the testimony

There are three pieces of testimony at issue: testimony of Overland Consulting served by the Commission's Consumer Protection and Safety Division (CPSD)¹ on September 17, 2012 ("Overland Report"), responsive testimony by Wells Fargo Securities served by PG&E on January 11, 2013 ("Wells Fargo testimony"), and rebuttal by Overland served on February 8, 2013 (collectively, "financial testimony"). Confidential and redacted versions of each of these pieces of testimony were served. Some supporting documents and workpapers produced in discovery were also marked confidential pursuant to § 583.

The subject matter that was designated as confidential includes:

- Financial industry analyst (including rating agencies) reports discussing PG&E's financial condition and the analysts' estimates of the penalties PG&E was likely to have to absorb as a consequence of the San Bruno explosion;
- Discussion of whether PG&E could or should raise part of the necessary capital by adjusting the dividends paid to shareholders (as opposed to raising capital by issuing equities);
- References to PG&E's plans to raise capital in the coming years;
- A reference to potential conflicts of interest of one of the industry analysts.

DRA intends to conduct cross-examination that refers to these portions of the testimony.

¹ Renamed Safety and Enforcement Division in January 2013.

A. Why the financial testimony should be made public

As a threshold matter, information submitted as confidential by a utility pursuant to § 583 may only be disclosed by order of the Commission or a Commissioner. (§ 583.)

The testimony designated as confidential should be made public for several reasons.

First, there is a strong public interest in making the record public in Commission proceedings except where a sufficient showing has been made to justify confidential treatment. In the San Bruno investigations, the public interest is exceptionally strong. And the question of how large a penalty can PG&E absorb is of great public interest.

Second, some of the information marked as confidential is already in the public domain. That is true of industry analysts' estimates of the amount of the penalties the Commission is likely to impose on PG&E. Also, PG&E recently disclosed publicly its plans to raise equity in 2013.

Third, it will be easier to keep the hearings open to the public during cross-examination if information that is unnecessarily designated as confidential is made public.

III. CONCLUSION

For the reasons discussed above, DRA respectfully requests an order publicly disclosing those portions of the financial testimony that have been designated as confidential, absent a sufficient showing by PG&E of a need to keep specific information confidential. The order should extend to supporting documents produced in discovery, and related discovery responses.

Respectfully submitted,

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