

**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)

(Not Consolidated)

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)

(Not Consolidated)

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)

(Not Consolidated)

**PG&E'S RESPONSE TO MOTION OF THE DIVISION OF
RATEPAYER ADVOCATES REGARDING THE 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**

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I. INTRODUCTION

PG&E agrees as much of the March 4 and 5 hearings addressing the financial analysis testimony and related issues should be open to the public as possible. Toward that end, PG&E conferred with the active parties to discuss whether additional material could be made public for the upcoming hearings. As explained below (and as previously discussed with the parties), PG&E agrees that significant portions of the testimony and reports that were previously redacted may be made public for the hearings. PG&E cannot agree, however, with DRA's sweeping request that *all* the financial analysis testimony and related discovery responses be made public.

DRA's articulated rationale that the public has a great interest in these proceeding, that some of the information at issue is already public, and that eliminating any confidentiality protection will make things "easier," cannot justify the wholesale elimination of the confidentiality of PG&E's non-public financial forecasts and information. PG&E agrees that any specific information that has been publicly disclosed since the reports or testimony were written no longer should be protected. PG&E will prepare revised public versions of the reports and testimony showing the limited portions it believes must remain confidential at the hearings. This highly confidential information includes non-public financial forecasts whose disclosure has the potential to confuse and materially mislead investors and prejudice PG&E. PG&E's interest in protecting the confidentiality of these materials more than outweighs either the public's interest in these proceedings – particularly as the vast majority of the testimony and reports will be public – or any potential inconvenience to the Commission or the parties, which, as we discuss below, is likely to be minimal.

II. SUBSTANTIAL PORTIONS OF THE TESTIMONY PREVIOUSLY MARKED CONFIDENTIAL MAY NOW BE PUBLICLY DISCLOSED.

Throughout the hearings in these three OIIs, the parties and ALJs have worked together to have public hearings while still protecting the confidentiality of certain information and exhibits. In that cooperative spirit, PG&E organized a call among the active parties Monday and told them that substantial portions of the previously confidential material could now be made public. Since receiving DRA's motion, PG&E has analyzed all of the confidentiality redactions in (1) Overland Consulting's August 21, 2012 report (the "Overland Report"), (2) Wells Fargo's January 11, 2013 report (the "Wells Fargo Report"), and (3) Howard Lubow and Dr. Robert Malko's rebuttal testimony (the "Rebuttal Testimony") to determine which portions of these reports and testimony no longer need to remain confidential. PG&E also has reviewed the related discovery responses for the same purpose. PG&E agrees that the following information no longer needs to be treated as confidential:

Materials from Credit and Equity Analyst Reports: PG&E originally designated the copies of credit and equity analyst reports it provided in discovery as confidential because the reports are typically available only to subscribers (i.e., they are not publicly available) and are subject to copyright protection. PG&E asserted confidentiality on behalf of the third party analysts, not itself. For purposes of the hearings, however, PG&E has proposed a compromise solution grounded in copyright law’s “fair use” doctrine, i.e., that the parties may put portions of these reports in the public record so long as they do not publicly disclose the entire report.¹ Thus, for example, the parties may quote from the reports during cross-examination or mark portions of reports as non-confidential exhibits. With one exception,² PG&E agrees that any references to analyst reports in the testimony should be unredacted and may be made public in the hearings.

Fees Earned by Wells Fargo from Its Relationship with PG&E : PG&E and Wells Fargo agree that the previously redacted information in the response to OCHP005 -Q1018 relating to the amount of fees earned by Wells Fargo’s various affiliates as a result of their relationship with PG&E may be used publicly at the hearing.

Certain Information Related to PG&E’s Dividend Policies: The Overland Report and the Rebuttal Testimony discuss whether PG&E could raise some part of any fine or penalty through a change to its planned dividend. For the reasons explained below, any specific references to planned dividends or dividend forecasts, to the extent PG&E has not already disclosed them, must remain confidential. PG&E agrees, however, that a number of high level

¹ This is consistent with how PG&E treated the analyst reports in both the Wells Fargo Report and in subsequent discovery responses. In the public versions of those documents PG&E did not redact quotations from or references to analysts’ statements or analysis. PG&E redacted only copies of complete reports.

² The Rebuttal Testimony reproduces an entire table from an ISI report. See Rebuttal Testimony, p. 25, Table 13. PG&E believes that disclosing this much of ISI’s analysis and modeling may go beyond “fair use” and therefore Table 13 and the related testimony should not be publicly disclosed. Again, in taking this position, PG&E is not seeking to protect its own confidentiality rights, but to avoid being accused of contributory infringement.

statements about dividends that were redacted in the Rebuttal Testimony do not need to be treated as confidential.³ These include, for example:

- “PCG’s annual expected payouts over the next few years are substantial.” (Rebuttal, p. 19, line 11)
- “Clearly, the company is expecting to distribute a large amount of its retained earnings to shareholders in the next few years.” (Rebuttal, p. 19, lines 14-16)
- “Although these are options PCG should consider, PCG could raise a substantial amount of equity by simply adopting a more conservative dividend policy.” (Rebuttal, p. 19, lines 19-20)

Certain Financial Information Relating to 2012: PG&E agrees that certain previously confidential information regarding 2012 may now be disclosed. This includes high level forecast information for 2012 and certain information about 2012 dividends. For example, the following information may be made public:

- In Table 3 of the Overland Report, the 2012 *total* expense and capital amounts;
- The 2012 amounts in Figures 7, 8 and 9 of the Wells Fargo Report (and related workpapers provided in Attachment 12 to the response to OCHP005-Q1013);
- The 2012E column in Table 7 of the Rebuttal Testimony; and
- All of the information in the response to TURN006 -Q19 except the 2013 forecast column.

PG&E does not agree that any information relating to 2012 may now be disclosed simply because the year is over. Detailed 2012 forecast information that was never made public must remain confidential for the reasons explained below.

Any Other Specific Information That Has Been Publicly Disclosed: PG&E also agrees, of course, that any specific information that has been publicly disclosed in some other forum need not remain confidential now. PG&E has carefully reviewed the reports and testimony for any specific numbers or other data that were previously non-public and confidential and that have since been publicly disclosed. As mentioned above, PG&E will

³ PG&E did not review the specific redactions in the public version of the Rebuttal Testimony before they were served on the parties.

provide revised public versions of the two reports and the Rebuttal Testimony. It also will provide revised public versions of the specific discovery responses referenced above.

III. THE SMALL AMOUNT OF HIGHLY CONFIDENTIAL INFORMATION IN THE REPORTS AND TESTIMONY MUST REMAIN CONFIDENTIAL AND NON-PUBLIC.

This leaves a very narrow range of information that must remain confidential. All forward-looking, non-public financial forecasts must remain confidential. This applies to the forecast information for 2013 through 2016, for example, in Figures 7, 8 and 9 of the Wells Fargo Report. PG&E is a publicly traded company whose public release of financial information is governed by the federal securities laws. Like any public company, PG&E must carefully consider what forward-looking financial information to release publicly. Information about forecast debt and equity issuances is of great interest to investors, and disclosing that information without all necessary context and explanation to ensure that it not be misinterpreted or relied on for purposes for which it was never intended could confuse and materially mislead investors.

The disclosure of detailed forecasts for 2012 that were never made public also has the potential to confuse investors and be materially misleading. Without PG&E providing a full explanation when the material is disclosed, there is a risk that investors would misinterpret differences between forecast amounts and actual results or the company's internal forecasting and planning process. Similarly, with respect to 2013, PG&E recently publicly disclosed certain high level information. For example, PG&E disclosed that it plans to issue an estimated \$1 billion to \$1.2 billion in equity in 2013. PG&E did *not* disclose the precise amount of its planned equity issuances and to disclose the specific amount stated in Figure 9 of the Wells Fargo report, which was based on an earlier forecast, has the potential both to mislead investors and harm PG&E. Publicly traded companies often provide forecast information in ranges to minimize investor confusion and the potential for the information to be misleading. For the same reason, PG&E and other public companies carefully provide the necessary context about any forecasts before making them public. Revealing PG&E's forecasts for 2012 and the equity amount for

2013 has a similar potential to materially mislead investors as disclosing the other forecasts for 2013-2016.⁴

PG&E's interest in maintaining the confidentiality of this information outweighs any competing interest in conducting every aspect of these proceedings in public. PG&E has no recourse if its forward looking financial projections (and other highly confidential financial information) are made public, whereas maintaining the confidentiality of this information likely will have little effect on how the hearings proceed. With respect to the cross-examination of CPSD's and PG&E's experts, it should be possible to conduct a full and complete cross examination without disclosing non-public information in the question or soliciting it in the response. When touching on the confidential forecast information discussed above, the parties can frame their questions generally, without disclosing specific confidential information, or, alternatively, can refer to confidential data by reference to page and line numbers without expressly stating the dollar amount in the record. Even if this proves to be unworkable in certain limited circumstances, the likelihood of harm to PG&E from disclosure outweighs any potential inconvenience that maintaining confidentiality would cause.

Lastly, PG&E has tried to be thorough in addressing the potential confidentiality issues for the March 4 and 5 hearings. DRA's motion, on the other hand, addresses only very general topics and never identifies a single specific data request response. PG&E requests an

⁴ The following information does not fall into the same category but also should remain confidential: (1) Wells Fargo's detailed workpaper provided in Attachment 3 to the response to OCHP005 -Q1013; and (2) Attachment 1 to PG&E's response to OCHP005 -Q1024. The former provides confidential information about *private placements* of debt with which Wells Fargo assisted for utilities *other than PG&E*. No party has expressly asked to use this information at the hearing, although it appears to be within the scope of DRA's motion. The latter provides detailed information regarding non-public contracts relating to collateral that PG&E would need to post in the event of a credit rating downgrade. The information relating to this issue in the Wells Fargo Report itself is not confidential.

opportunity to respond in more specificity before the Commission orders the public disclosure of any previously confidential data request response not otherwise addressed in this Response.

Respectfully submitted,

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