

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)

**DECLARATION OF HARVEY Y. MORRIS IN OPPOSITION TO PACIFIC GAS AND ELECTRIC COMPANY'S REQUEST FOR OFFICIAL NOTICE**

I, Harvey Y. Morris, declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am an Assistant General Counsel of the Energy Transmission Section in Legal Division. Among my responsibilities, I supervise the attorneys representing the Consumer Protection and Safety Division (CPSD), now known as the Safety and Enforcement Division (SED) in the three Orders Instituting Investigation (OII) involving the San Bruno explosion in I.12-01-007 (San Bruno OII), Pacific Gas and Electric Company's (PG&E) inadequate recordkeeping in I.11-02-016 (Recordkeeping OII), and PG&E's failure to properly classify its transmission pipeline in locations with high population density in I.11-11-009 (Class Location OII). Each of these OIIs have had different attorneys representing CPSD. In the Recordkeeping OII, the attorneys representing CPSD have been Robert Cagen and Catherine Johnson, who are both retired annuitants and have limited hours, and Darryl Gruen. In the San Bruno OII, the attorneys representing CPSD have been Travis Foss and Jason Reiger. Jason has been promoted to Assistant General Counsel of the Advisory Section of Legal Division, which has

considerably limited his role due to his time constraints. In the Class Location OII, the attorney representing CPSD has been Pat Berdge.

2. Although I have been able to help the attorneys representing CPSD in the litigation of these three OIIs, I have only been able to attend a small portion of the hearing days in the Recordkeeping OII and the San Bruno OII, due to my other responsibilities including supervising attorneys representing CPSD in electric safety matters, representing the Commission in federal and state court cases challenging the Commission, supervising attorneys representing the Commission before the Federal Energy Regulatory Commission in rate cases, and supervising attorneys representing the Division of Ratepayer Advocates (DRA) in rate cases.

3. The active intervenors in these OIIs have been DRA, The Utility Reform Network (TURN), the City and County of San Francisco (CCSF), and the City of San Bruno. At various times, these intervenors had one or two attorneys assigned to all of these cases.

4. In contrast, I have personally observed that PG&E has had numerous in-house counsel, as well as at least 10 different outside counsel from its outside law firm.

5. In the past, parties have always been able to work out the schedules in these cases between them subject to the approval or modifications of the Administrative Law Judges (ALJs). Because of penalties could be so immense, parties agreed that there would be a need for a joint hearing in a separate phase of these OII proceedings, to address the issue of how much PG&E can afford to pay without affecting its creditworthiness. Parties also agreed that for certain of PG&E's witnesses, where they were still subject to cross-examination on similar issues in the Recordkeeping OII and the San Bruno OII hearings, that they could be jointly cross-examined in both proceedings at the same time, before both of the presiding ALJs, ALJ Wetzell and ALJ Yip-Kikugawa.

6. A few months ago, PG&E had proposed "meshing" the records in the Recordkeeping OII and the San Bruno OII. CPSD had indicated that we were against PG&E's approach and nobody heard further about this proposal. Therefore, CPSD believed that this proposal had terminated. On March 5, 2013 after 3:00 p.m., less than

six days before opening briefs were due in the San Bruno OII proceeding (i.e., March 11, 2013), PG&E sent parties an e-mail suggesting parties agree to combine the records for purposes of briefing of this case. On March 7, 2013, I responded on behalf of CPSD, and rejected PG&E's proposal. Attached hereto and marked "Exhibit A" is a true and correct copy of the e-mail exchange between me and PG&E's outside counsel on this matter.

7. One of the main reasons for my rejection was that there are severe limits on the time of and resources available to the attorneys that represent CPSD and the intervenors. In addition, CPSD had separate teams of attorneys in the OIIs, so CPSD would be at a significant disadvantage if PG&E's proposal were granted, because the separate teams of attorneys representing CPSD were not very familiar with the records in the other OII proceedings, and I only had a general understanding of all these OIIs. CPSD attorneys were hard-pressed to finish the opening brief in the San Bruno OII proceeding by the March 12, 2013 deadline, even without looking throughout the records in the Recordkeeping OII.

8. Among the reasons in my e-mail, which I had provided to PG&E as to why CPSD opposed PG&E's request, was the following:

[I]t is fundamentally unfair, less than one week prior to the time our initial brief is due in the San Bruno OII, for PG&E to bring up the idea of seeking to rely upon any of the record evidence in any other proceeding.

Obviously, CPSD has been preparing its San Bruno brief solely on the evidence in that proceeding, and we think PG&E should be limited to the San Bruno record, as well. Therefore, with the exception of exhibits designated as joint exhibits, CPSD is opposed to your request.

9. PG&E ignored CPSD's and DRA's opposition, and at the end of the business day on March 11, 2013, PG&E filed its Request for Judicial Notice (RJN) with its 11 MB of exhibits from the Recordkeeping OII, which was so large that it had to be sent in four separate e-mails. Even though it was so large, it would only contain very selective excerpts of reporters' transcripts or CPSD expert witness Felt's testimony. At the end of the day on March 11, 2013, PG&E also filed its opening brief with extensive

references throughout its brief to these exhibits that were subject to its request for judicial notice.

10. PG&E never disclosed what exhibits in the Recordkeeping OII, which PG&E intended to rely upon in its RJN in advance of the time in which it filed its opening brief, let alone how many exhibits there would be. Presumably, PG&E had been including these references for many weeks as it was preparing its draft of its opening brief.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 20, 2013, in San Francisco, California.

/s/ HARVEY Y. MORRIS

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Harvey Y. Morris

# **Exhibit A**

**Morris, Harvey Y.**

**From:** Morris, Harvey Y.  
**Sent:** Thursday, March 07, 2013 9:06 AM  
**To:** 'Weed, Michael C.'; Foss, Travis; Reiger, J. Jason; Austin.Yang@sfgov.org; Theresa Mueller; Britt Strottman (bstrottman@meyersnave.com); smeyers@meyersnave.com; Bone, Traci; Paull, Karen P.; Tom Long; Marcel Hawiger  
**Cc:** Wilson, Michelle (Law); Malkin, Joseph M.; PGE Jordan, Lise; Linn, Courtney J.; Morris, Harvey Y.; Berdge, Patrick S.; Cagen, Robert; Gruen, Darryl  
**Subject:** RE: PG&E Request for Official Notice

Mr. Weed,

This was an issue brought up earlier in these proceedings by Joe Malkin, when he discussed the idea of "meshing" all of the record exhibits into one record. At that time, CPSP had indicated our opposition to it. Your example of jointly designated evidence presents a totally different situation, when parties were given advance notice that hearings are jointly being conducted and both ALJs were present to judge the demeanor of the witnesses. In this latter situation, we have no opposition to testimony or exhibits being used in those joint hearings being referred to in briefs in those proceedings. Indeed, the care the ALJs took in allowing evidence in the record as Joint exhibits or exhibits in individual proceedings is contrary to your view that the ALJs would support your motion. In addition, unless the Commission has made a finding in its decision in the Safety Rulemaking, which the decision itself can be cited by any party, CPSP objects to evidence being used in the San Bruno brief from that proceeding.

Moreover, it is fundamentally unfair, less than one week prior to the time our initial brief is due in the San Bruno OII, for PG&E to bring up the idea of seeking to rely upon any of the record evidence in any other proceeding.

Obviously, CPSP has been preparing its San Bruno brief solely on the evidence in that proceeding, and w Therefore, with the exception of exhibits designated as joint exhibits, CPSP is opposed to your request..

Harvey Y. Morris  
 Attorney for CPSP

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**From:** Weed, Michael C. [mailto:mweed@orrick.com]  
**Sent:** Tuesday, March 05, 2013 3:13 PM  
**To:** Foss, Travis; Reiger, J. Jason; Morris, Harvey Y.; Austin.Yang@sfgov.org; Theresa Mueller; Britt Strottman (bstrottman@meyersnave.com); smeyers@meyersnave.com; Bone, Traci; Paull, Karen P.; Tom Long; Marcel Hawiger  
**Cc:** Wilson, Michelle (Law); Malkin, Joseph M.; PGE Jordan, Lise; Linn, Courtney J.  
**Subject:** PG&E Request for Official Notice

All,

Given the relation and overlap among the various proceedings the Commission initiated following the Line 132 rupture, PG&E suggests that the parties request that ALJ Wetzel take official notice of the records in the related proceedings, namely, the Records OII (I.11-012-016), the Class Location OII (11-11-009) and the Safety Rulemaking (R.11-02-019). Taking official notice of these records will permit the parties to refer to any relevant documents in their briefing and provide the ALJ and the Commission a comprehensive record. Much of the testimony and numerous exhibits received in the San Bruno OII are already jointly designated with the Records OII and/or Class OII, so we expect that ALJ Wetzel will be inclined to grant the request.

PG&E is preparing a Request for Official Notice to be filed with its opening brief in the San Bruno OII. The Request will ask the ALJ to take official notice of all pleadings, testimony and exhibits received in each of the related proceedings noted above. Please let us know at your

3/20/2013

earliest convenience if you will support the Request. Thanks.

Mike Weed

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