

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, Law, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

I.12-01-007
(Filed January 12, 2012)

**DIVISION OF RATEPAYER ADVOCATES' RESPONSE TO PG&E MOTION
REGARDING THE CITATION OF MATERIALS OUTSIDE THE RECORD**

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I. OVERVIEW

Pursuant to Rule 11.1(e) of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) hereby files this response to the April 1, 2013 motion of Pacific Gas and Electric Company (PG&E) requesting an order clarifying the appropriate citation of materials outside the evidentiary record of this proceeding.

PG&E complains that the City of San Bruno (San Bruno), The Utility Reform Network (TURN) and DRA have cited to extra-record evidence in their Opening Briefs in this proceeding. It argues that specific citations in both the TURN and DRA briefs should be struck from those pleadings if its prior Motion for Official Notice is not reconsidered.

The various intervenors' use of extra-record evidence cited by PG&E in support of its motion hardly justifies further Commission action, except to lay to rest PG&E's continued insistence on consolidating the records of two of the San Bruno investigations, this proceeding and the Recordkeeping Investigation, I.11-02-016.

The Administrative Law Judge Ruling of March 27, 2013, logically and properly denied PG&E's request for consolidation of the records stating: "In effect, PG&E's request for official notice attempts to mesh certain selected portions of the evidentiary records despite [the] fact [that the two proceeding have not been consolidated]." This guiding principle should be followed here and PG&E's motion should be denied.

II. CLARIFICATION OF THE MARCH 27, 2013, ALJ RULING IS UNNECESSARY

In support of its request for a clarifying order, PG&E points to a handful of instances covering over 150 pages of briefs where DRA, TURN, and San Bruno have cited to authorities outside the record of this proceeding. PG&E does not dispute the actual substance of these citations. By comparison, PG&E's own arguments relying upon extra-record evidence span over a dozen pages of its Opening Brief and involve significant issues in dispute. Thus, the scope of what PG&E has done in its brief pales in

comparison to the very minor, otherwise unobjectionable, contextual citations that DRA, TURN, and San Bruno have provided in their briefs.

Even PG&E admits that San Bruno's citation to newspaper and television stories regarding the explosion appropriately convey "the human dimension" of the San Bruno explosion. On this basis, while PG&E complains about San Bruno's use of these materials, PG&E ultimately does not object to allowing those citations to remain in San Bruno's pleadings.

With regard to DRA's brief, PG&E complains about DRA's reliance on four types of materials:

- Judicial Orders approving consent decrees issued in three gas pipeline incidents, all of which employ independent third party monitors;
- A small portion of PG&E's undisputed testimony in R.11-02-019 – the Pipeline Safety Proceeding;
- An undisputed estimate provided by a PG&E data response in the Pipeline Safety Proceeding; and
- A 1984 Bechtel Report that is available on the Commission's website and the authenticity of which no one has challenged.

It is important to note that with the exception of the Judicial Orders approving consent decrees, PG&E is the source of all of the information PG&E now seeks to strike from DRA's brief. Furthermore, both the 1984 Bechtel Report and the Judicial Orders that PG&E objects to here were not part of the record of the Pipeline Safety Proceeding, but were included in DRA's pleadings in that case with no objection from PG&E.

In sum, the extra-record evidence relied upon by DRA in its Opening Brief provides useful context, and is either substantively undisputed and/or properly the subject of official notice by this Commission.

First, Judicial Orders, such as the consent decrees PG&E objects to here, are properly the subject of official notice by the Commission. To the extent it is necessary to formalize this conclusion, DRA requests that the Commission take official notice of the Judicial Orders, and references to those orders cited in DRA's Opening Brief, at notes 225, 226, and 227.

Second, DRA questions the value of requiring it to strike undisputed PG&E testimony and an undisputed PG&E estimate provided by PG&E in data responses in the related Pipeline Safety Proceeding. Specifically, the undisputed PG&E testimony at issue is that PG&E has acknowledged that over the last 30 years the Commission has generally authorized cost recovery and full capital return for PG&E.¹ The undisputed estimate at issue is that PG&E has estimated that Phase 2 of its pipeline enhancement plan will cost between \$6.8 and \$9 billion.

To the extent it is necessary to formalize the principle that PG&E's undisputed representations in related proceedings may be used in this proceeding, DRA requests that the Commission take official notice of these two representations, which are cited in DRA's Opening Brief at pp. 29-30, note 100, and p. 58, note 208. To the extent PG&E's complaint regarding the pipeline enhancement plan estimate is related to the fact that DRA cited its own testimony, rather than the original PG&E data response containing the estimate, DRA clarifies for the record that the original source document was PG&E's Data Request Response DRA_022-Q06 in R.11-02-019.² If the Commission deems it necessary, DRA will re-file its Opening Brief in this proceeding to add the citation to this data request response.

Third, while the 1984 Bechtel Report should have been included in the record of this proceeding, it was not. A related 1986 Bechtel Report *was* included in the record of this proceeding,³ and the similarities in the two Bechtel reports were discussed in DRA's Opening Brief at pages 15-16. Significantly, PG&E has not challenged the authenticity of either of the Bechtel reports, the accuracy of the information in those reports, or the accuracy of DRA's quotation from the 1984 report, which is discussed and quoted at pages 15-16 of its Opening Brief. And the Commission found the 1984 report relevant

¹ DRA OB, pp. 29-30 and p. 58, note 208.

² DRA's Opening Brief in R.11-02-019, p. 3, note 12, cited to DRA's testimony (Ex. 149, Chap. 9, p. 2 and note 5.), which cited to this data response.

³ I.12-01-007, Ex. CPSD-164, Exhibit 120 to Deposition of C. Tateosian, Vol. III

enough to the San Bruno investigations to include it on its website.⁴ On this basis, to the extent necessary, the Commission should take official notice of the 1984 Bechtel report or admit it into the record of this proceeding.

Ultimately, PG&E’s complaint, and its request for clarification or to strike these extra-record citations, is based on the argument that “[t]he same standard should be applied to all parties” and that “[t]here is no basis on which to distinguish the material cited by DRA and TURN ...”⁵ However, there is a significant difference between the intervenors’ and PG&E’s use of extra-record evidence which merits different treatment. As described above, DRA’s extra-record citations are to two undisputed representations by PG&E in a related proceeding, a report that PG&E has not substantively objected to and which the Commission found relevant enough to the San Bruno investigations to include on its website, and three Judicial Orders approving consent decrees. All of these references are properly the subject of official notice.

III. CONCLUSION

For all the reasons set forth herein, PG&E’s motion for clarification, or in the alternative motion to strike certain portions of the DRA and TURN Opening Briefs in this proceeding, should be denied.

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⁴ The 1984 Bechtel Report is available on the Commission’s website at <http://www.cpuc.ca.gov/NR/rdonlyres/E75846A0-FAD1-4A0C-AACF-C176D9F8DD7B/0/TransmissionLineRiskAnalysis1984.pdf>

⁵ PG&E April 1, 2013 Motion, p. 5.

Respectfully submitted,

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