

From: Yip-Kikugawa, Amy C.

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'tlong@turn.org' (tlong@turn.org); 'theresa.mueller@sfgov.org' (theresa.mueller@sfgov.org); 'jmalkin@orrick.com' (jmalkin@orrick.com); Bone, Traci (traci.bone@cpuc.ca.gov); Foss, Travis (travis.foss@cpuc.ca.gov); 'catherine.mazzeo@swgas.com' (catherine.mazzeo@swgas.com); 'kdaly@stinson.com' (kdaly@stinson.com); Ramaiya, Shilpa R (/o=PG&E/ou=Corporate/cn=Recipients/cn=SRRd); Wilson, Michelle (Law (/O=PG&E/OU=Corporate/cn=Recipients/cn=MLW3); Smith, Bruce T (/O=PG&E/OU=Corporate/cn=Recipients/cn=BTS1); 'bstrottman@meyersnave.com' (bstrottman@meyersnave.com); Hietbrink, Kevin (/O=PG&E/OU=Corporate/cn=Recipients/cn=KXHY); 'mchediak@bloomberg.net' (mchediak@bloomberg.net); 'dvanhoogstraten@stinson.com' (dvanhoogstraten@stinson.com); 'thnxvm@gmail.com' (thnxvm@gmail.com); 'mfallon@taloncap.com' (mfallon@taloncap.com); 'ESelmon@Jemzar.com' (ESelmon@Jemzar.com); 'lauren.duke@db.com' (lauren.duke@db.com); 'rajeev.lalwani@morganstanley.com' (rajeev.lalwani@morganstanley.com); 'ppatterson2@nyc.rr.com' (ppatterson2@nyc.rr.com); 'anjani.vedula@db.com' (anjani.vedula@db.com); 'pbattaglia@bcgpartners.com' (pbattaglia@bcgpartners.com); 'kkonolige@bcgpartners.com' (kkonolige@bcgpartners.com); 'austin.yang@sfgov.org' (austin.yang@sfgov.org); Gruen, Darryl (darryl.gruen@cpuc.ca.gov); 'case.admin@sce.com' (case.admin@sce.com); 'marcel@turn.org' (marcel@turn.org); 'mdjoseph@adamsbroadwell.com' (mdjoseph@adamsbroadwell.com); 'Gloria.Ing@sce.com' (Gloria.Ing@sce.com); 'RPrince@SempraUtilities.com' (RPrince@SempraUtilities.com); 'rkoss@adamsbroadwell.com' (rkoss@adamsbroadwell.com); 'bnaeve@levincap.com' (bnaeve@levincap.com); 'angelica.morales@sce.com' (angelica.morales@sce.com); 'douglas.porter@sce.com' (douglas.porter@sce.com); 'cjackson@ci.sanbruno.ca.us' (cjackson@ci.sanbruno.ca.us); 'SHruby@SempraUtilities.com' (SHruby@SempraUtilities.com); 'randall@nexusamllc.com' (randall@nexusamllc.com); 'dng@SempraUtilities.com' (dng@SempraUtilities.com); 'sunny.kwak@macquarie.com' (sunny.kwak@macquarie.com); 'ted@PointState.com' (ted@PointState.com); 'Francis.McNulty@sce.com' (Francis.McNulty@sce.com); 'JLsalazar@SempraUtilities.com' (JLsalazar@SempraUtilities.com); 'NStein@LevinCap.com' (NStein@LevinCap.com); 'jdangelo@catapult-llc.com' (jdangelo@catapult-llc.com); 'mgoldenberg@luminusmgmt.com' (mgoldenberg@luminusmgmt.com); 'MFranco@SempraUtilities.com' (MFranco@SempraUtilities.com); 'kfallon@sirfunds.com' (kfallon@sirfunds.com); 'stomkins@semprautilities.com' (stomkins@semprautilities.com); 'jonathan.arnold@db.com' (jonathan.arnold@db.com); 'jheckler@levincap.com' (jheckler@levincap.com); 'stephen.byrd@morganstanley.com' (stephen.byrd@morganstanley.com); 'NKhumawala@WolfeTrahan.com' (NKhumawala@WolfeTrahan.com); 'maguirre@amslawyers.com'

(maguirre@amslawyers.com); 'John.A.Apgar@Citi.com' (John.A.Apgar@Citi.com); 'khelmuth@cityofmadera.com' (khelmuth@cityofmadera.com); Cooke, Michelle (michelle.cooke@cpuc.ca.gov); 'smeyers@meyersnave.com' (smeyers@meyersnave.com); Bruno, Kenneth (kenneth.bruno@cpuc.ca.gov); Halligan, Julie (julie.halligan@cpuc.ca.gov); Peleo, Marion (marion.peleo@cpuc.ca.gov); Stepanian, Raffy (raffy.stepanian@cpuc.ca.gov); Donnelly, Katherine E (/O=PG&E/OU=Corporate/cn=Recipients/cn=KED6); RegRelCPUCCases (/O=PG&E/OU=Corporate/cn=Recipients/cn=RegRelCPUCCases); Peck, David B. (david.peck@cpuc.ca.gov); Paull, Karen P. (karen.paull@cpuc.ca.gov); Lindh, Frank (frank.lindh@cpuc.ca.gov); Prosper, Terrie D. (terrie.prosper@cpuc.ca.gov); Morris, Harvey Y. (harvey.morris@cpuc.ca.gov); Myers, Richard A. (richard.myers@cpuc.ca.gov); Lee, Kelly C. (kelly.lee@cpuc.ca.gov); Dorman, Elizabeth (elizabeth.dorman@cpuc.ca.gov); 'abb@eslawfirm.com' (abb@eslawfirm.com); 'atrowbridge@daycartermurphy.com' (atrowbridge@daycartermurphy.com); 'cem@newsdata.com' (cem@newsdata.com); 'rvn@a-klaw.com' (rvn@a-klaw.com); 'nes@a-klaw.com' (nes@a-klaw.com); 'filings@a-klaw.com' (filings@a-klaw.com); Cagen, Robert (robert.cagen@cpuc.ca.gov); Adams, Dionne (/O=PG&E/OU=Corporate/cn=Recipients/cn=DNG6); 'wmc@a-klaw.com' (wmc@a-klaw.com); 'sgs@dcbsf.com' (sgs@dcbsf.com); Kotch, Andrew (andrew.kotch@cpuc.ca.gov); 'gburke@ap.org' (gburke@ap.org); 'BCragg@GoodinMacbride.com' (BCragg@GoodinMacbride.com); 'service@cforat.org' (service@cforat.org); 'dmarcus2@sbcglobal.net' (dmarcus2@sbcglobal.net); 'henrypielage@comcast.net' (henrypielage@comcast.net); Reiger, J. Jason (Jonathan.Reiger@cpuc.ca.gov); 'jmullan@meyersnave.com' (jmullan@meyersnave.com); Wetzell, Mark S. (mark.wetzell@cpuc.ca.gov); Chow, Christopher (christopher.chow@cpuc.ca.gov); 'deborah.slon@doj.ca.gov' (deborah.slon@doj.ca.gov); 'William.Westfield@smud.org' (William.Westfield@smud.org)

Cc: ALJ Process (ALJ_Process@cpuc.ca.gov); ALJ Docket Office (ALJ_Docket_Office@cpuc.ca.gov); ALJ Central Files Staff (ACF@cpuc.ca.gov)

Bcc:

Subject: I.12-01-007 (San Bruno OII) - ALJ Ruling re citation to materials

NOTICE TO PARTIES IN I.12-01-007

The following ruling addresses PG&E's motion regarding the citation of materials outside the record of this proceeding. A written ruling confirming and memorializing this ruling will be issued at a later date. I have asked Judge Yip-Kikugawa to distribute this e-mail ruling as I do not have full access to the Commission's e-mail system.

ALJ Mark S. Wetzell

ADMINISTRATIVE LAW JUDGE'S RULING ON PG&E'S MOTION REGARDING THE CITATION OF MATERIALS OUTSIDE THE RECORD OF THIS PROCEEDING

On April 2, 2013 Pacific Gas and Electric (PG&E) filed a motion regarding the citation of materials outside the record of this proceeding. (PG&E served the motion on April 1, 2013, a California state holiday.) PG&E's motion is made in light of the March 27, 2013 e-mail ruling which denied in large part PG&E's March 11, 2013 motion for official notice of materials cited in its opening brief. PG&E argues for consistency in the application of the standards discussed in the March 27 ruling for official notice, and therefore seeks the removal of four citations in the opening brief of the Division of Ratepayer Advocates (DRA) and two citations in the opening brief of the Utility Reform Network (TURN). Alternatively, PG&E seeks reconsideration of the March 27 e-mail ruling. Responses to PG&E's motion were filed by DRA and TURN on April 5, 2013. This ruling resolves PG&E's April 2 motion.

Fair and consistent application of the standards for official notice discussed in the March 27, 2013 e-mail ruling require removal of certain of the disputed citations in DRA's and TURN's opening briefs. Even though some of the citations are to data originally provided by PG&E in other proceedings, PG&E may nevertheless contest how the data are used in this proceeding. By first providing the citation references in their opening briefs, DRA and TURN did not provide adequate notice to PG&E. With certain exceptions discussed below, official notice of such references to other proceedings is therefore inappropriate and the related citations should be removed.

However, official notice of judicial orders is appropriate and consistent with the Evidence Code. PG&E's request to remove DRA's citations in Notes 225, 226, and 227 of DRA's opening brief is denied. Also, PG&E's request to remove TURN's citation to written testimony of witness Harrison, who testified in joint hearings in the records proceeding and this proceeding, will be denied. I concur with TURN that it is reasonable to take official notice of written testimony that was subject to cross-examination in the joint hearings.

While the disputed citations in DRA's and TURN's briefs should be removed, I do not find that

it is necessary for DRA and TURN to re-file their opening briefs. The March 27, 2013 e-mail ruling directed PG&E to re-file its brief to avoid confusion in light of the extensive number of changes required. In the case of DRA's and TURN's opening briefs, the disputed citations are small in number and clearly delineated in PG&E's motion.

IT IS RULED that

1. The motion of Pacific Gas and Electric Company (PG&E) regarding the citation of materials outside the record is granted in part and denied in part as set forth in the foregoing discussion and in the following paragraph.

2. The contested citations at pages 16, 30, 58, and 60-61 of the opening brief of the Division of Ratepayer Advocates (DRA) and at page 6 of the opening brief of The Utility Reform Network (TURN), as set forth in detail in PG&E's motion, are stricken.

Dated April 8, 2013.

Mark S. Wetzell
Mark S. Wetzell

Administrative Law Judge