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Subject: I.12-01-007 - Ruling on CPSD Motion for Clarification

NOTICE TO PARTIES

The following ruling addresses CPSD's motion for clarification and sets a new date for reply briefs. A written ruling confirming and memorializing this e-mail ruling will be issued at a later date.

ALJ Wetzell

ADMINISTRATIVE LAW JUDGE'S RULING ADDRESSING MOTION OF THE
CONSUMER PROTECTION AND SAFETY DIVISION FOR CLARIFICATION AND
SETTING DATE FOR REPLY BRIEFS

By motion filed April 9, 2013, the Consumer Protection and Safety Division (CPSD) seeks clarification of the Administrative Law Judge's e-mail ruling dated April 2, 2013 (April 2 Ruling). That ruling resolved the March 18, 2013 motion of Pacific Gas and Electric (PG&E) to strike Appendix C to the CPSD opening brief. PG&E responded to CPSD's motion on April 11, 2013.

The April 2 Ruling struck Appendix C and directed CPSD to re-file the appendix, adding for each alleged violation a reference to where the Order Instituting Investigation (OII) or one or more of its referenced documents provided PG&E with notice of the factual basis for the allegation. CPSD served a revised Appendix C on April 8, 2012 that was limited in scope to alleged violations pertaining to PG&E's emergency response and did not address other categories of alleged violations.^[1]

CPSD takes the position that both PG&E's motion to strike Appendix C and the April 2 Ruling were limited in scope to CPSD's alleged violations concerning PG&E's emergency response on September 9, 2010. However, I do not find that PG&E's motion was so limited in scope, and the April 2 Ruling was not so limited. Even though PG&E's motion and the April 2 Ruling discussed violations pertaining to its emergency response, those discussions were designated as examples. Moreover, Ordering Paragraph 2 of the April 2 Ruling reads as follows:

"2. Appendix C to CPSD's Opening Brief is stricken. CPSD is authorized to re-issue Appendix C to its Opening Brief to add a third column with the heading "Reference." For each alleged violation, CPSD should provide in this column specific reference to where the OII or one or more of its referenced documents provides PG&E with notice of the factual basis for the allegation. To the extent, if any, that no such reference can be identified for any particular alleged violation, CPSD should delete that alleged violation. CPSD should file and serve its revised Appendix C on or before April 8, 2013."

Nothing in Paragraph 2 states or indicates that it is applicable solely to emergency response violations. Since the revised Appendix C submitted by CPSD on April 8, 2013 is limited in scope to alleged violations related to PG&E's emergency response, I direct CPSD to again re-issue Appendix C to cover all categories of alleged violations.

CPSD poses several questions seeking guidance for complying with the April 2 Ruling. While I generally concur with PG&E that it is for CPSD to demonstrate that it provided PG&E adequate notice of the factual basis for each alleged violation, I confirm the following:

- CPSD is only required to provide the specific references that are sufficient to demonstrate that adequate notice of a violation was provided. CPSD is not required to provide in a revised Appendix C every single factual basis upon which each allegation is based.
- To the extent that the OII referenced documents posted on the Commission's website, the term "OII or one or more of its referenced documents" as used in the April 2 Ruling includes those documents. CPSD may also refer to its direct testimony and references therein.

I will grant CPSD additional time, to April 18, 2013 (10 days from the original due date for revised Appendix C), to prepare and file a revised Appendix C that covers all of CPSD's alleged violations. Reply briefs will be due on April 25, 2013 (5 business days after the submission of revised Appendix C).

Following an exchange of e-mails among the parties, I issued an e-mail ruling on April 9, 2013 that directed parties to meet and confer to develop a procedural plan to address both my intention to have a summary table of CPSD's alleged violations and the confusion about the scope of the April 2 Ruling. In an e-mail later that day, PG&E's attorney reported that five of the six active parties met and conferred in a conference call. Since this ruling resolves the issues that I directed the parties to address, I now vacate that ruling.

IT IS RULED that

1. The motion of Consumer Protection and Safety Division (CPSD) for clarification of the Administrative Law Judge's ruling dated April 2, 2013 is granted to the extent set forth in the foregoing discussion and is otherwise denied.
2. CPSD is directed to re-issue Appendix C to its Opening Brief to add a third column with the heading "Reference." For each alleged violation, CPSD should provide in this column specific reference to where the OII or one or more of its referenced documents provides PG&E with notice of the factual basis for the allegation. To the extent, if any, that no such reference can be identified for any particular alleged violation, CPSD should delete that alleged violation. CPSD should file and serve its revised Appendix C on or before April 18, 2013.
3. Reply briefs in this proceeding are due on April 25, 2013.
4. The April 9, 2013 e-mail ruling directing parties to meet and confer is vacated.

Dated April 12, 2013, at San Francisco, California.

Mark S. Wetzell
Mark S. Wetzell Administrative Law
Judge

[1] As noted in the April 2 Ruling, Appendix C grouped the alleged violations under the following subheadings: (1) PG&E's fabrication and construction of Segment 180 of Line 132 (13 violations), (2) PG&E's Integrity Management Program (15 violations), (3) PG&E's SCADA System and the Milpitas Terminal (5 violations) , (4) PG&E's Emergency Response (21 violations), and (5) PG&E's Safety Culture (1 violation).