

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 with Respect to
Facilities Records for its Natural Gas
Transmission System Pipelines.

I.11-02-016
(Filed February 24, 2011)

**MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION FOR
JUDICIAL NOTICE AND ALTERNATIVE MOTION THAT SEVERAL
EXHIBITS BE CONSIDERED IN ORDER TO LIMIT INFERENCES DRAWN
FROM PG&E'S EXHIBIT 11**

HARVEY Y. MORRIS

Attorney for the
Consumer Protection and Safety Division
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1086
Fax: (415) 703-2262
Email: hym@cpuc.ca.gov

ROBERT CAGEN

Attorney for the
Consumer Protection and Safety Division
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1385
Fax: (415) 703-2262
Email: rcc@cpuc.ca.gov

DARRYL J. GRUEN

Attorney for the
Consumer Protection and Safety Division
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1973
Fax: (415) 703-2262
Email: djg@cpuc.ca.gov

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I. INTRODUCTION

Pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure (Rules), the Consumer Protection and Safety Division (CPSD) moves that the Administrative Law Judge (ALJ) take official notice of several documents, shown immediately below this paragraph. In the alternative, pursuant to Rule 11.1 of the Rules, CPSD moves that the ALJ consider these same documents to limit the inferences drawn from PG&E Exhibit 11, which has already been officially noticed.

CPSD Exhibit 1: Letter from Christopher P. Johns, President of Pacific Gas and Electric Company to Honorable Deborah A. P. Hersman, Chairman of the National Transportation Safety Board, dated January 31st, 2013.

CPSD Exhibit 2: PG&E Power Point Presentation entitled "PG&E Pipeline Safety Enhancement Plan (PSEP) Expedited Application Workshop", dated March 26, 2013.

True and accurate copies of these documents, as provided by PG&E in Data Response 97, are attached to this motion.

In its Request for Official Notice dated March 25, 2013, PG&E requested that official notice be taken of a document it called “Letter from NTSB to Christopher P. Johns, President of Pacific Gas and Electric Company, dated March 14, 2013 (Exhibit 11).”¹ The Administrative Law Judge in I.11-02-016 ruled that official notice shall be taken of Exhibit 11.² CPSD now requests official notice of CPSD Exhibits 1 and 2 to provide additional necessary information for PG&E Exhibit 11 to be understood in proper context with sufficient notice to PG&E in advance of Reply Briefs. Cal. Evid. Code §453. In the alternative, CPSD proffers Exhibits 1 and 2 for the limited purpose of showing that the Exhibit 11 cannot be used for showing the truth of the contents therein.

Rule 13.9 provides that the Commission may take official notice of “such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.”

A. CPSD Exhibits 1 and 2 Provide Necessary Additional Context; CPSD Exhibits 1 and 2 Also Show that PG&E’s Judicially Noticed Exhibit 11 Cannot Be Used for the Truth of the Contents Therein

In the Introduction of its Opening Brief, PG&E prominently places the statement that “On March 14, 2013, the NTSB declared its MAOP validation recommendation to PG&E “Closed – Acceptable Action.”³ Prior to the Administrative Law Judge taking Official Notice of the NTSB letter, PG&E presumptuously references its request for official notice as support for this statement rather than referring to any fact in the record of the proceeding. PG&E goes on to state in its opening brief that “The Commission has

¹I.11-02-016, PG&E Request for Official Notice, March 25, 2013, P. 2.

²“ADMINISTRATIVE LAW JUDGE’S RULING RESOLVING PACIFIC GAS AND ELECTRIC COMPANY’S REQUEST FOR OFFICIAL NOTICE”, March 28, 2013 email to service list.

³Opening Brief of Pacific Gas & Electric Company, P. 2.

described the NTSB Safety Recommendations as ‘the principal basis for this Order Instituting Investigation.’”⁴

However, in *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1141 fn. 6, the Court stated: “The truth of the content of the articles is not a proper matter for judicial notice.” In fact, CPSD Exhibit 1 shows the January 31, 2013 letter referenced by PG&E Exhibit 13, which appears to be the source of information relied upon by the NTSB to classify its MAOP validation recommendation to PG&E as “Closed—Acceptable Action”. CPSD agrees that Exhibit 13 shows that the NTSB letter on March 14, 2013, shows that the NTSB has classified recommendations P-10-3, P-11-24 and -31 as “Closed—Acceptable Action”. However, the NTSB’s March 14, 2013, letter to PG&E references PG&E’s January 31 letter to the NTSB. Moreover, the author of the PG&E January 31 letter has not been made available during this proceeding for cross examination to probe the statements made in PG&E’s January 31, 2013 letter. Therefore, the NTSB letter should not be taken for the truth of the contents therein.

The inference drawn from PG&E’s statements is a matter of dispute between PG&E and CPSD. Indeed, CPSD asserts, based upon PG&E’s own words in CPSD Exhibit 2, that PG&E has not completed MAOP validation of 2,088 miles of its natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a MAOP established through prior hydrostatic testing. For example, according to PG&E, one necessary element of the MAOP validation effort, Quality Assurance/Quality Control of the MAOP validation data,⁵ is not scheduled to be complete until June 2013.⁶ Another fact that shows PG&E has not

⁴ Opening Brief of Pacific Gas & Electric Company, P. 2.

⁵ CPSD Exhibit 2, P. 6.

⁶ Id. at 5.

completed its MAOP validation is PG&E's acknowledgement that it estimates its application date will be late August to mid-September 2013.⁷

Therefore, CPSD requests official notice be taken of CPSD Exhibits 1 and 2 in order to provide sufficient information to enable PG&E Exhibit 13 to be taken in proper context, with sufficient advance notice to PG&E before reply briefs of this proceeding. Cal. Evid. Code Section 453. In the alternative, CPSD proffers Exhibits 1 and 2 for the limited purpose of showing that PG&E Exhibit 1 cannot be taken for the truth of the contents therein, consistent with requirements of the California Supreme Court. *Zelig v. County of Los Angeles, sura*, 85 Cal.4th at 1141 fn.6.

II. CONCLUSION

As the discussion above demonstrates, good cause exists for the ALJ to take official notice of both CPSD Exhibits 1 and 2. Alternatively, good cause exists for the ALJ to consider CPSD Exhibits 1 and 2 in order to limit the inferences that can be drawn from PG&E Exhibit 13.

Respectfully submitted,

/s/ DARRYL J. GRUEN
DARRYL J. GRUEN

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1086
Fax: (415) 703-2262
Email: djg@cpuc.ca.gov

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⁷ Id. at 6.