

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)

**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 5, 2013 motion of Pacific Gas and Electric Company (PG&E) requesting an order for reconsideration of an Administrative Law Judge (ALJ) Ruling of March 28, 2013 denying in part PG&E's request for official notice. In the alternative, PG&E's motion requests an order directing various parties to re-file their Opening Briefs in this proceeding deleting references to materials outside the evidentiary record.

PG&E complains that the Consumer Protection and Safety Division (CPSD), DRA, The Utility Reform Network (TURN), and the City and County of San Francisco (CCSF) have cited to extra-record evidence in their Opening Briefs in this proceeding. PG&E requests that, absent reconsideration of the March 28 ALJ Ruling, specific citations in the CPSD, DRA, TURN and CCSF briefs should be struck from those pleadings.

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 San Bruno Explosion Investigation, I.12-01-007. Alternatively, should the Commission find that striking portions of the various Opening Briefs is necessary, DRA requests that it not be required to take the extra step of re-filing its Opening Brief, consistent with the treatment provided in the April 8, 2013, ALJ E-Mail Ruling addressing similar issues in the San Bruno Explosion Investigation.

II. CLARIFICATION OF THE MARCH 28 ALJ RULING IS UNNECESSARY

In support of its request for a clarifying order, PG&E points to a handful of instances where various parties have cited to authorities outside the record of this proceeding. Significantly, PG&E does not dispute the actual substance of these citations.

With regard to DRA's Opening Brief, PG&E complains about DRA's reliance on three types of materials:

- Judicial Orders approving consent decrees issued in three gas pipeline incidents;
- Written testimony from the related San Bruno Explosion Investigation which underlies the joint cross examination for this proceeding and the San Bruno Explosion Investigation; and
- The Independent Review Panel Report (IRP Report) commissioned by this Commission to report on the causes of the San Bruno explosion.

In sum, the extra-record evidence relied upon by DRA in its Opening Brief provides useful context, and is either properly the subject of official notice by this Commission, or should be admitted into the record of this proceeding.

First, Judicial Orders, such as the consent decrees PG&E objects to here, are properly the subject of official notice by the Commission. PG&E raised this same objection in the San Bruno Explosion Investigation and its request to strike was denied in the April 8 ALJ E-Mail Ruling. PG&E's Motion here should also be denied for the same reason. 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 89, 90, and 91.

Second, PG&E objects to DRA's citation to the written testimony of Mr. Zurcher and Ms. Keas, which is in the record of the San Bruno Explosion Investigation and which was subject to joint cross exam in both this proceeding and the San Bruno Explosion Investigation. As explained by DRA in its Opening Brief at note 117: "Mr. Zurcher's testimony from the San Bruno OII is within the record of this proceeding based upon cross examination of Mr. Zurcher, and questions regarding this testimony, in the Joint Evidentiary Hearings." DRA provided a similar explanation with regard to Ms. Keas' testimony at note 140 of its Opening Brief. As the TURN Response to PG&E's April 5 Motion explains, PG&E raised the same issue in the San Bruno Explosion Investigation when it sought to have TURN's citation of Mr. Harrison's written testimony from this

proceeding struck, even though the joint cross examination spanning both this proceeding and the San Bruno Explosion Investigation was based on Mr. Harrison's written testimony. TURN explained, like the DRA footnotes in its Opening Brief, that it should follow that the *written* testimony on which the cross examination was based should also be in the joint record. The April 8 ALJ E-Mail Ruling agreed with TURN and ruled that it was reasonable to take official notice of Mr. Harrison's written testimony in the other proceeding. The same rule should apply here and PG&E's request with respect to DRA's citations to the Zurcher and Keas written testimony should be denied. DRA has no objection if the Commission similarly takes official notice in both proceedings of the written testimony.

Third, PG&E objects to both DRA and CCSF citations to the IRP Report commissioned by this Commission to investigate the causes of the San Bruno explosion. DRA joins in the arguments set forth in CCSF's Response to PG&E's April 5 Motion. Among other things, this Commission should take judicial notice of the IRP Report for the same reasons that it took official notice of the National Transportation Safety Board Report and the CPSD Report on the causes of the San Bruno explosion.

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 materials cited by CPSD, DRA, TURN, and CCSF"¹ 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 three Judicial Orders approving consent decrees, written testimony on which joint cross examination was based, and the IRP Report. All of these documents DRA cites to are either properly the subject of official notice or should be officially added to the record of this proceeding. And none of them have the effect of improperly consolidating the record of this proceeding with that of the San Bruno Explosion Investigation.

¹ PG&E April 5, 2013 Motion, p. 6.

In contrast, as the March 28 ALJ Ruling properly found:

PG&E's request for official notice of selected testimony and cross-examination is effectively an attempt to consolidate portions of the evidentiary records.

Finally, taking official notice of PG&E's comments on a proposed decision in R.11-02-019 (document #7) and Exhibit No. 3 to Xcel Energy Advice Letter No. 809-Gas, No. 11AL-809G, Col. Pub. Util. Comm'n (document # 8) is not appropriate.

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 Opening Brief in this proceeding, should be denied.

Respectfully submitted,

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