

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the
Commission's Own Motion into 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)

**PG&E'S REPLY TO CPSD'S, DRA'S, TURN'S, AND
CCSF'S RESPONSES TO PG&E'S MOTION FOR
RECONSIDERATION OF ALJ'S MARCH 28 RULING
DENYING IN PART REQUEST FOR OFFICIAL NOTICE
OR, IN THE ALTERNATIVE, DIRECTING OTHER
PARTIES TO REFILE THEIR OPENING BRIEFS
DELETING REFERENCE TO MATERIALS NOT IN THE
RECORD OF THIS PROCEEDING**

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Dated: April 11, 2013

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[INSERT Rule 11.1(f) statement]

CPSD's opposition does not address the merits of PG&E's motion for reconsideration.¹ Instead, CPSD argues that it should not be required to delete either of the two record references PG&E raised in its motion to reconsider:

- NTSB Record #455567, Sept. 17, 2010 (National Transportation Safety Board investigation. Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010.) : Interview of M. Hickey, 16 Sep 2010 (CPSD OB at 69 & n.188).
- Pipeline Rules of Thumb Handbook, 7th Edition, 2009 (CPSD OB at 159 & nn.514-16).

CPSD explains in its response that the first of these items is in the record. PG&E agrees and withdraws its motion as to this document. The problem was that CPSD's Opening Brief citation was incomplete. CPSD described the document but did not cite to the page or pages in

¹ Pursuant to *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964), PG&E expressly reserves its federal constitutional and any other federal claims and reserves its right to litigate such claims in federal court following any decision by the Commission, if necessary.

the (voluminous) record on which it is relying or even explain where in the record the document can be found.

CPSD argues that it may cite to the second of these items, the Rules of Thumb Handbook, because Ms. Felts cited the source in her rebuttal testimony. *See Ex. CPSD-4 at 40 nn.193-95.* Had CPSD cited Ms. Felts' testimony, which in turn cites the handbook, PG&E would have had no objection. But there is no valid basis for CPSD to cite directly to the handbook without seeking official notice. CPSD concedes the handbook is not in evidence. It is no answer that the handbook was cited by Ms. Felts' testimony. This reasoning would apply equally to one of the PG&E documents as to which the ALJ denied official notice – the exhibit to an advice letter to the Colorado Public Utilities Commission. *See ALJ's March 28th Ruling (document #8).* In that instance, Maura Dunn referred to and cited the advice letter in her testimony, although she did not make it an exhibit, and yet the ALJ denied official notice. *See Ex. PG&E-62 at MD-33.* The two documents (The Rule of Thumb Handbook and the Advice Letter) are indistinguishable. All that distinguishes them is that PG&E requested official notice and CPSD did not. PG&E asks that it receive the same treatment: either admit neither of them or admit both of them.

Among the Intervenor, TURN forthrightly acknowledges there is no basis for distinguishing between PG&E's citation to the written testimony of Mssrs. Slibsager and Kazimirsky, who testified at the joint hearing, and TURN's and DRA's citations to the written testimony of Mr. Harrison, Mr. Zurcher, and Ms. Keas. DRA disputes the merits of PG&E's motion. It argues that PG&E should receive different treatment than all other parties – even though PG&E alone sought official notice – because the “documents DRA cites to are either properly the subject of official notice or should be officially added to the record.” DRA Response at 3. But DRA fails to distinguish its extra-record citations from PG&E's. Neither the fact that DRA has now made a belated request for official notice in its response, *see* DRA Response at 2, nor its conclusory assertions that its request is proper while PG&E's is not, are persuasive grounds for treating PG&E differently from the other parties.

The same standards should apply to all parties. The ALJ should reconsider her ruling denying official notice to material cited by PG&E or, alternatively, she should direct CPSD, DRA, TURN, and CCSF to refile their opening briefs omitting references to the materials outside the record of this proceeding.

Respectfully submitted,

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