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Subject: I.11-02-016 - ALJ Ruling on PG&E's Motion for Reconsideration

NOTICE TO PARTIES IN I.11-02-016:

The following ruling addresses PG&E's motion for reconsideration, or in the alternative to delete other parties' citation to materials outside the record of this proceeding. A written ruling confirming and memorializing this ruling will be issued at a later date.

Amy C. Yip-Kikugawa

Administrative Law Judge

California Public Utilities Commission

(415)-703-5256

## **ADMINISTRATIVE LAW JUDGE'S RULING ON**

### **PG&E'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, DIRECTING OTHER PARTIES TO DELETE REFERENCE TO MATERIALS NOT IN THE RECORD**

On April 5, 2013, Pacific Gas and Electric Company (PG&E) filed a motion requesting reconsideration of a March 28<sup>th</sup> email ruling, which denied in part, its request for official notice of various documents. PG&E argues that reconsideration is warranted in light of an April 4, 2010 ruling that granted CPSD's motion for official notice of two documents. In the alternative, PG&E seeks consistency in the application of the standards discussed in the March 28 email ruling and requests that CPSD, the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN) and the City and County of San Francisco (CCSF) be directed to delete from their opening briefs citations to materials outside the record. CPSD, DRA, TURN and CCSF filed responses to PG&E's motion on April 10, 2013. PG&E filed a reply to these responses on April 11, 2013. This ruling resolves PG&E's April 5<sup>th</sup> motion.

#### Rules of Thumb Handbook

PG&E had initially requested that two citations in CPSD's Opening Brief be removed. In its April 11<sup>th</sup> response, PG&E withdraws its request for one of the documents, a reference to NTSB Record #455567, dated Sept. 17, 2010 (cited on page 69 of CPSD's Opening Brief). It reaffirms its objection to Rules of Thumb Handbook (cited on page 159 of CPSD's Opening Brief). PG&E notes

that the handbook had been cited in CPSD witness Felts' testimony and would not have objected if CPSD had cited Ms. Felts' testimony in the Opening Brief. However, PG&E maintains that CPSD should not be allowed to cite directly to the handbook. PG&E bases its assertion on the March 28<sup>th</sup> ruling, which denied official notice of an advice letter cited in PG&E witness Dunn's testimony. PG&E contends that CPSD's citation to the Rules of Thumb Handbook is no different than PG&E's citation to the advice letter, and thus, warrants the same treatment.

I do not agree CPSD's citation to the Pipeline Rules of Thumb Handbook in its Opening Brief reflects Ms. Felts' testimony. (See Exh. CPSD-4 at 40:8-14.)

Ms. Dunn's testimony cited an Xcel Energy advice letter to support her proposition that utilities would need to raise their rates to comply with the NTSB's requirement for "traceable, verifiable and complete" records support MAOP. However, in its Opening Brief, PG&E cited to an exhibit in this advice letter for an entirely different purpose – to support its assertion that other operators had data quality problems. Based on Ms. Dunn's testimony, there was no notice to CPSD that PG&E would be citing to the advice letter in this manner. Based on these considerations, these two documents do not warrant the same treatment. PG&E's request to delete CPSD's citation to pages 71 and 74 of the Pipeline Rules of Thumb Handbook is denied.

#### Independent Review Panel Report and Judicial Orders

PG&E requests that DRA's and CCSF's citations to the Report of the Independent Review on the San Bruno Explosion (IRP Report) be removed. It also requests that DRA's citation to three consent decrees also be removed. PG&E's request to remove these documents is denied. I concur with CCSF that the IRP Report is no different from the NTSB Report, of which official notice has been taken. As with the NTSB Report, all parties are familiar with the IRP Report and there is no prejudice to any party to taking official notice of the document at this time. The judicial orders approving consent decrees were issued by the U.S. District Court. I do not find that orders from Federal District Court should be treated differently than an order from the California Superior Court, of which official notice had been taken. Additionally, DRA notes that in an April 8<sup>th</sup> email ruling in I.12-01-007, Judge Wetzell took official notice of judicial orders. Accordingly, PG&E's request to remove citations to the IRP

Report and the judicial orders approving consent decrees is denied.

Testimony of Joint Evidentiary Hearing Witnesses

PG&E requests that DRA's citations to written testimony from PG&E witnesses Zurcher and Keas be removed and that TURN's citation to written testimony from PG&E witness Harrison be removed. PG&E notes that this would be consistent with the March 28<sup>th</sup> email ruling, which denied PG&E's request for official notice of written testimony of PG&E witnesses Slibsager and Kazimirsky. All of these witnesses were subject to cross-examination in the joint evidentiary hearings with I.12-01-007. Both TURN and DRA argue that written testimony on which cross-examination is based should be part of the joint record. Further, both note that in an April 8<sup>th</sup> email ruling in I.12-01-007, Judge Wetzell took official notice of written testimony that was subject to cross-examination in the joint hearings. Upon consideration of these arguments, along with ALJ Wetzell's ruling, I will take official notice of written testimony of the following joint hearing witnesses: Slibsager/Kazimirsky, Zurcher, Keas and Harrison.

**IT IS RULED that**

1. The motion of Pacific Gas and Electric Company (PG&E) for reconsideration is granted to the extent that official notice shall be taken of the testimony of PG&E witnesses Slibsager and Kazimirsky in I.12-01-007. PG&E's motion for reconsideration is denied in all other respects.
2. PG&E's motion to remove the contested citations in CPSD's Opening Brief, TURN's Opening Brief, DRA's Opening Brief and CCSF's Opening Brief is denied.

Dated April 15, 2013.

/s/ Amy C. Yip-Kikugawa

Amy C. Yip-Kikugawa  
Administrative Law Judge