

**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 to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

I.12-01-007
(Filed January 12, 2012)

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE
TO THE CONSUMER PROTECTION AND SAFETY
DIVISION'S MOTION FOR CLARIFICATION OF THE
ALJ'S RULING DATED APRIL 2, 2013**

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Dated: April 11, 2013

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CPSD's motion for clarification of the ALJ's April 2, 2013 email ruling granting in part and denying in part PG&E's motion to strike Appendix C to CPSD's opening brief is built on the oft-repeated, but false premise that PG&E's motion was "limited to emergency response violations."¹ On that basis, CPSD goes so far as to demand of the ALJ, "Did the ALJ intend to expand the scope of PG&E's Motion to Strike?"² CPSD mischaracterizes the scope of PG&E's motion. The motion, as the ALJ understood, asked that the entire Appendix C be stricken, and that is what the ALJ did when he directed CPSD to refile Appendix C.

1. PG&E's Motion And The ALJ's Ruling Addressed All Of Appendix C

PG&E moved to strike Appendix C on the grounds that CPSD's addition and recharacterization of alleged violations of law after the close of evidence violated due process notice requirements. PG&E argued that Appendix C should be stricken and, instead of the 55 alleged violations contained in Appendix C, CPSD should be limited to the 18 violations it had

¹ CPSD Mot. at 2. *See also id.* at 1 ("PG&E's Motion to Strike challenged the legal adequacy of the notice provided by CPSD for allegations of violations relating to PG&E's emergency response on September 9, 2012"), 3 ("PG&E does not question the adequacy of the notice of other violations"), 5 ("The scope of PG&E's Motion to Strike was limited to the Emergency response section of CPSD's allegations of violations."), 6 ("Since PG&E is not challenging the adequacy of the notice for all of the other violations . . .").

² CPSD Mot. at 2.

set out in Section X of its January 12, 2012 report under the heading “PG&E’s VIOLATIONS OF APPLICABLE LAWS AND REGULATIONS.”³

CPSD constructs its argument from a portion of PG&E’s motion discussing the new alleged emergency response violations in CPSD’s Appendix C. That discussion follows the statement in the first paragraph of the motion that PG&E asked the ALJ “to strike Appendix C” – not part of Appendix C. The portion of the motion on which CPSD relies begins: “*An example highlights the problem PG&E confronts.*”⁴ And, the last paragraph of the motion states in full:

CPSD failed to charge the 37 new violations in its January 12, 2012 report and only revealed them after the close of evidence. Had CPSD included the 55 charges in Appendix C of its brief in its list of “PG&E’S VIOLATIONS OF APPLICABLE LAWS AND REGULATIONS,” PG&E would have defended itself against each of them. Now, it is too late for PG&E to exercise its fundamental due process right to prepare and present a defense against CPSD’s tardy charges. ***Appendix C to CPSD’s March 11, 2013 opening brief should be stricken, and the proceeding decided based on the alleged violations contained in Section X of CPSD’s January 12, 2012 report.***⁵

The ALJ’s April 2, 2013 email ruling granted in part and denied in part PG&E’s motion. The ALJ rejected PG&E’s request that CP SD be limited to pursuing the alleged violations stated in Section X to CPSD’s January 12, 2012 report, but agreed that Appendix C should be stricken. To give CPSD an opportunity to demonstrate that PG&E had “adequate and timely notice of the factual basis for each of CPSD’s alleged violations,” the ALJ directed CPSD to revise and resubmit Appendix C to include evidentiary references. The ALJ explained:

I find that it is necessary for CPSD to provide additional information to confirm that PG& E was given timely and adequate notice of the factual bases ***for each of CPSD’s alleged violations*** . Specifically, CPSD should 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 reference can be identified ***for any particular alle ged violation*** , CPSD should delete that alleged violation. (Emphasis added; footnote deleted.)

³ Motion to Strike at 1, 7, 10.

⁴ Motion to Strike at 4 (emphasis added).

⁵ Motion to Strike at 10-11 (emphasis added).

Reaffirming the ALJ's conclusion, Ordering Paragraph 2 directed:

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.*** (Emphasis added.)

On April 9, 2013, the ALJ sent an email making clear that he understood the motion just as PG&E filed it. As the ALJ described in that email, the "narrow scope of CPSD's response (emergency response)" did not comport with "the broad scope of my ruling (all violation categories)."

2. The ALJ Should Order CPSD To Expediently Comply With The April 2, 2013 Ruling

CPSD does not and cannot point to anything in the ALJ's April 2, 2013 Ruling that could reasonably lead to the conclusion that only a portion of Appendix C was stricken. CPSD's limited compliance with the ruling cannot be undone. However, the ALJ should order CPSD to comply with the ruling in its entirety and establish a date in the immediate future by which CPSD must do so.

While CPSD poses a series of questions to the ALJ as to exactly how it should revise its Appendix C, the ALJ need not address those questions. The purpose of the revised Appendix C is for CPSD to demonstrate that it provided PG&E constitutionally adequate notice of the factual basis for each of the alleged violations it intends to pursue. By definition, that notice would have to appear in CPSD's original submission to which PG&E responded in its one evidentiary submission on June 26, 2012. As the April 2, 2013 ruling made clear:

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 reference can be identified for any particular alleged violation, CPSD should delete that alleged violation. (Emphasis added.)

Given the purpose of refiling Appendix C and the clarity of the direction in the ruling, it is for CPSD to decide what evidence it thinks it has to satisfy that threshold and identify it. CPSD does not need the ALJ to do that work for it.

3. The ALJ Should Allow Five Days From The Filing Of CPSD's Revised Appendix C For Reply Briefs

Until it receives a complete revised Appendix C that complies with the ALJ's April 2, 2013 ruling, PG&E will not know what alleged legal violations it is defending against and cannot finalize its reply brief. After receiving CPSD's revised Appendix C, PG&E will need time to review and analyze CPSD's cited sources, and to conform its reply brief to CPSD's newly provided information. PG&E requests that reply briefs be due five days after CPSD's filing and service of its complete revised Appendix C.

Respectfully submitted,

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