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

RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO TO PG&E'S MOTION FOR RECONSIDERATION OF ALJ'S MARCH 28 RULING OR, IN THE ALTERNATIVE, DIRECTING OTHER PARTIES TO REFILE THEIR OPENING BRIEFS DELETING REFERENCE TO MATERIALS NOT IN THE RECORD OF THIS PROCEEDING

In its Motion for Reconsideration of the ALJ's March 28th Ruling (Motion), PG&E argues that the ALJ should require the City and County of San Francisco (San Francisco) to remove from its Opening Brief citations to the report issued by Independent Review Panel (IRP). PG&E's request is without merit and should be denied.

The IRP was formed by the Commission through Resolution L-403 on September 23, 2010 to "gather facts and make recommendations based on the facts to the Commission as to whether there is a need for the general improvement of the safety of PG&E's natural gas transmission lines, and if so, how these improvements should be made." The IRP issued a report on June 8, 2011. Comments and reply comments on the report were submitted July 15 and July 29, 2011. The IRP is available on the Commission's website and has been referenced numerous times throughout the rulemaking and investigations related to the San Bruno explosion.

In this way, the IRP report is no different from the NTSB report. The ALJ granted official notice of the NTSB report, as requested by PG&E, in her March 28, 2013 e-mail ruling. In granting official notice of the NTSB and CPSD Reports, the ruling notes "[a]ll parties in the proceeding are

familiar with both these reports, and there is no prejudice to CPSD or intervenors in taking notice of them at this late date." The IRP report is in the record in Investigation 12-01-007, like the NTSB and CPSD reports. In addition, PG&E filed comments and reply comments on the IRP report so there is no basis here for a claim of prejudice by PG&E.

Furthermore, judicial notice of the IRP is proper because CPUC 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." It is well established under Cal. Evid. Code §452(c) that an official act of the state of California may be judicially noticed and that "reports, and orders of administrative agencies are "official acts" of which a court may take judicial notice." *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518; *Hogen v. Valley Hospital* (1983) 147 Cal.App.3d 119, 125.

PG&E's argument that the Commission should not judicially notice the IRP because it does not meet the requirements of Cal. Evid. Code §452(h)[1] is without merit. The contents of the IRP report are publicly available and not reasonably subject to dispute. If PG&E wants to draw different conclusions from those contents than has San Francisco, it is free to do so in its reply brief. This argument is further undermined by PG&E's positive statements regarding the report. PG&E's comments on the IRP stated, "Although our review continues, we agree in full spirit with the panel's overall conclusions and in principle with its 18 formal recommendations." (PG&E's Comments on the Independent Review Panel Report filed July 15, 2011 in R.11-02-019 at p.1)

[1] Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451: Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. *Cal. Evid. Code §452(h).*

For the foregoing reasons, the ALJ should deny PG&E's request to strike the reference to the IRP report from San Francisco's Opening Brief.

Dated: April 10, 2013

Respectfully submitted,

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By: /S/
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CERTIFICATE OF SERVICE

I, KIANA V. DAVIS, declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4649.

On April 10, 2013, I served:

RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO TO PG&E'S MOTION FOR RECONSIDERATION OF ALJ'S MARCH 28 RULING OR, IN THE ALTERNATIVE, DIRECTING OTHER PARTIES TO REFILE THEIR OPENING BRIEFS DELETING REFERENCE TO MATERIALS NOT IN THE RECORD OF THIS PROCEEDING

by electronic mail on all parties in CPUC Proceeding No. I.11-02-016 on the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 10, 2013, at San Francisco, California.

/S/
KIANA V. DAVIS

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