

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.

Investigation 12-01-007
(Filed January 12, 2012)

(Not Consolidated)

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)

(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with High Population Density.

Investigation 11-11-009
(Filed November 10, 2011)

(Not Consolidated)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES TO MOTION OF
THE CONSUMER PROTECTION AND SAFETY DIVISION TO STRIKE
REFERENCES IN PACIFIC GAS AND ELECTRIC COMPANY'S COORDINATED
REMEDIES BRIEF TO ALLEGED FACTS OUTSIDE OF THE RECORD**

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May 31, 2013

The Division of Ratepayer Advocates (DRA) supports the motion of the Consumer Protection and Safety Division (CPSD) to strike portions of the “Coordinated Remedies Brief” filed by Pacific Gas and Electric Company (PG&E) on May 24, 2013.

CPSD is correct that PG&E’s use of evidence outside the record of these proceedings, if allowed, would violate the other parties’ right to a fair hearing. Adjudicators who are required to decide a case after a hearing may not consider evidence that was not introduced at the hearing, and of which parties were never given notice. *English v. City of Long Beach* (1950) 35 Cal. 2d 155, 158; *Rondon v. Alcoholic Beverage Control Appeals Bd.* (2007) 151 Cal. App. 4th 1274, 1289; *Clark v. City of Hermosa Beach* (1996) 48 Cal. App. 4th 1152, 1173.

CPSD is also correct that violations relating to encroachment on PG&E’s rights of way are outside the scope of these proceedings. There is no record evidence to support any determination regarding encroachment issues. The Commission cannot, in these proceedings, make a determination regarding costs related to PG&E’s encroachment problems. To do so would constitute reversible error. See *Southern Cal. Edison Co. v. PUC* (2006) 140 Cal. App. 4th 1085, 1107.

Finally, CPSD is correct that the Commission cannot legally take official notice of untested and controversial assertions in PG&E’s brief about how much money its shareholders have spent or will spend to remedy problems related to San Bruno.

The Commission is required by statute as well as due process to make its decisions in these cases based on the record. Public Utilities Code § 1701.2 (a).

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For all of these reasons set forth in CPSD's motion and in these brief comments, CPSD's motion to strike should be granted.

Respectfully submitted,

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/s/ TRACI BONE

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