

**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)

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.

I.11-02-016

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 Higher Population Density.

I.11-11-009
(Filed November 10, 2011)

NOT CONSOLIDATED

**RESPONSE OF THE UTILITY REFORM NETWORK TO THE 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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In accordance with the March 29, 2013 e-mail ruling of Administrative Law Judge Wetzell, The Utility Reform Network (“TURN”) submits this Response in full support of the Consumer Protection and Safety Division’s (“CPSD”) *Motion to Strike References in Pacific Gas and Electric Company’s Coordinated Remedies Brief to Alleged Facts Outside of the Record* (“Motion”). In addition, this Response explains that, depending on the resolution of the Motion, parties may need additional time to submit their closing briefs on fines and remedies.

I. THE COMMISSION SHOULD GRANT THE MOTION EXPEDITIOUSLY

TURN fully supports CPSD’s Motion and would have filed the same motion itself if CPSD had not done so. As CPSD correctly points out, the information in Appendix A of PG&E’s Coordinated Remedies Brief (“CRB”) is not part of the record in this case and therefore may not be cited or relied upon in PG&E’s briefs and argument to the Commission. This is a basic principle of due process in administrative proceedings, particularly proceedings in which extensive evidentiary hearings have been held. After all of the careful attention in the hearings and post-hearing motions to determining which material would be allowed into the record and which was excluded, it was more than surprising that PG&E would make the extra-record information in Appendix A such a central part of its argument, without even acknowledging that Appendix A was outside the record or submitting a motion making a case for why such information was properly included in PG&E’s brief.

PG&E attempts to use Appendix A in support of its argument that the Commission should effectively impose no additional fines or disallowances in these three cases. It is no exaggeration to point out that the arguments advanced by PG&E based on Appendix A relate to more than \$1 billion in remedial costs -- and whether those costs will be borne by shareholders as a consequence of the violations and imprudence proven in these cases, or whether they

continue to be imposed on ratepayers. Appendix A consists of cost projections and unaudited claims of incurred costs above authorized levels, the kind of information that, in a typical rate case, would be the subject of: (1) utility testimony and detailed workpapers, (2) extensive discovery, (3) responsive testimony by parties such as TURN, DRA, and other intervenors, and (4) cross examination in evidentiary hearings. None of this has occurred with respect to Appendix A.

The types of complicated issues presented by the data in Appendix A include:

- What is the basis for the cost forecasts, and are those forecasts reasonable?
- What are the offsetting tax benefits that shareholders have received and will receive in connection with gas transmission pipeline expenditures?
- With respect to the “Gas Accord V” expenditures: (a) Has PG&E correctly identified the amounts that were authorized for rate recovery? (b) Are shareholders benefitting from lower than authorized gas transmission spending in areas other than those listed in Appendix A? and (c) What is the factual basis for PG&E’s claim that the listed expenses were “unforeseeable”, and what (if any) is the relevance of this claim?
- What are the detailed cost data supporting the summary figures in Appendix A and, in light of PG&E’s strong incentive to maximize these numbers (under PG&E’s theory, each dollar shown is a dollar less that comes out of shareholder pockets), how can the Commission ensure that it has accurate and complete data?

None of these issues have been addressed with respect to Appendix A because Appendix A is not in the record.

For these reasons and the additional reasons provided in CPSD’s Motion, the Commission should strike the following in PG&E’s CRB: (1) Appendix A; (2) all text and footnotes that cite to or rely upon Appendix A, including arguments that are based upon the

information in Appendix A; and (3) all text and footnotes that cite to or rely upon PG&E's April 30, 2013 Pipeline Safety Enhancement Plan Compliance Report, which is outside the record of this case and has not yet been reviewed in the record of R.11-02-019. PG&E should be required to submit a revised brief making the required deletions – and no other changes -- as quickly as reasonably possible.

II. DEPENDING ON THE COMMISSION'S RESOLUTION OF THE MOTION, PARTIES MAY NEED ADDITIONAL TIME FOR THEIR CLOSING BRIEFS ON FINES AND REMEDIES

Assuming the Commission grants CPSD's Motion, the parties will need to see PG&E's revised brief before they can file their closing briefs. If, as TURN urges, the Commission orders PG&E to delete the extra-record material and does not allow PG&E to make other revisions to its brief, then TURN would be prepared to file its closing brief on the later of: (1) the current due date of June 5, 2013; or (2) 24 hours after receiving PG&E's corrected brief. TURN thus requests that, if necessary, the due date for closing briefs for all parties be adjusted accordingly. However, if (contrary to CPSD's motion and this Response) PG&E is allowed to revise its brief in any substantive way, TURN and other parties would need additional time to prepare their closing briefs. The amount of additional time would be dependent on the extent and substantive nature of the revisions. Accordingly, TURN is not in a position at this time to estimate how much additional time it would need.

Because the law is so clear that PG&E's extra-record information should be stricken, in preparing its closing brief to date, TURN has operated under the assumption that CPSD's motion will be granted in full. In addition, the adopted schedule was based on the reasonable assumption that PG&E would not attempt to rely extensively on untested extra-record material in its CRB. If, contrary to the clear requirements of due process, PG&E is allowed to keep in its

CRB some or all of the extra-record material identified in CPSD's Motion, TURN will need significantly more time to prepare its closing brief, including time to prepare its own extra-record materials in response.¹ In this unlikely event, TURN would request that the parties be given an additional 14 days to file their closing briefs.

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Respectfully submitted,

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¹ We emphasize that an extension of time and the opportunity to present responsive extra-record material would in no way cure the serious due process violation that would occur if all or part of PG&E's extra-record material is allowed to remain in its brief. As noted previously, in a typical CPUC case, such information would be the subject of workpaper analysis, discovery, responsive testimony and cross examination, none of which has happened here. Accordingly, TURN and other parties would be deprived of the critical information gained through such processes in preparing their closing briefs.