

**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) (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.	I.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 Higher Population Density.	I.11-11-009 (Filed November 10, 2011) (Not Consolidated)
Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	R.11-02-019 (Filed February 24, 2011) (Not Consolidated)

**REBUTTAL BRIEF OF THE NORTHERN CALIFORNIA
GENERATION COALITION ON PG&E FINES AND PENALTIES**

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REBUTTAL BRIEF OF THE NORTHERN CALIFORNIA GENERATION COALITION ON PG&E FINES AND PENALTIES

Pursuant to the California Public Utilities Commission (Commission) Rules of Practice and Procedure, and the schedule established by Administrative Law Judge Wong, the Northern California Generation Coalition (NCGC)¹ submits this Rebuttal Brief on Fines and Penalties to the Commission in the above captioned proceedings.²

I. PENALTIES SHOULD BE PAID TO IMPROVE THE SAFETY OF PG&E'S SYSTEM AND FUND ALL PHASES OF THE PSEP.

NCGC members operate gas-fired electric generation in Northern California and obtain gas transportation services from PG&E. As such, NCGC's members are PG&E ratepayers and have been directly impacted by PG&E's failure to adequately maintain its records and its gas transmission system. NCGC members will be responsible for a share of the \$299 million in rate increases to pay for the Pipeline Safety Enhancement Plan (PSEP) costs directed under D.12-12-030. *PG&E's ratepayers should not be responsible for any portion of the PSEP costs.* Penalties and fines resulting from this proceeding should be applied to the portion of the PSEP costs allocated to ratepayers in D.12-12-030.³

The CPUC has very broad jurisdictional authority over PG&E pursuant to California law. That authority allows the Commission to impose fines and penalties (Public Utilities Code (PUC) sections 2107 and 2108) and direct remedial action and reimbursement of ratepayer expenses (PUC section 701). All of the parties that briefed the Commission on the issue of penalties, including PG&E, noted the Commission's considerable discretion in this regard. The parties also noted that the Commission has the requisite legal authority to direct that penalty monies be used to improve the safety of PG&E's gas system. Even PG&E concurred with CPSD's recommendation that "whatever penalty the Commission adopts be

¹ The members of NCGC are the City of Redding, the City of Santa Clara (doing business as Silicon Valley Power), Modesto Irrigation District, the Northern California Power Agency, and Turlock Irrigation District.

² Concurrently with the filing of this rebuttal brief, NCGC, a party to R.11-02-019 and I.11-02-016, has filed a Motion for Party Status in I.12-01-007 and I.11-11-009.

³ In D.12-12-030 the Commission contemplated that further "ratemaking adjustments maybe be adopted" based on the various enforcement regulations, and noted that "all ratemaking recovery authorized in today's decision is subject to refund." (D.12-12-030, p. 4)

directed to activities and projects that enhance gas transmission safety” and that the Commission has considerable discretion under PUC section 701 to adopt the form of penalty that is appropriate under the circumstances. (PG&E Brief, p. 8)

There is sufficient legal support for a Commission determination that the penalty be allocated towards Phase I and Phase II costs and expenses of PG&E’s PSEP allocated to ratepayers in D.12-12-030. This amount, however, should not be used to offset PG&E’s existing responsibility for funding the utility’s share of the PSEP costs, but rather should be applied 100% to that portion of the PSEP for which ratepayers are responsible. The facts and circumstances surrounding the incidents at issue here are unique; despite precedent that generally allows for fines in enforcement proceedings to be paid to the State General Fund, as PG&E, CPSD and others have noted, doing so in this case would do nothing to advance safety improvements on the gas system. Requiring PG&E to pay those penalties directly towards safety upgrades and to correct the underlying violations is a deterrent to future conduct (by both PG&E and other regulated entities) and results in the utility – rather than its ratepayers – funding the necessary improvements. Both of these objectives cannot be met by paying the penalty into the State General Fund. Accordingly, the Commission’s interests in ensuring safety improvements and protecting PG&E’s ratepayers is best served by requiring the penalties to be used directly for payment of the PSEP cost allocated to ratepayers and other related safety and recordkeeping improvements.

As several parties noted, following the traditional approach of payment of penalties into the General Fund would do nothing to advance the safety of the PG&E gas system. Instead, PG&E’s shareholders should be held directly responsible for the very improvements and investments that are necessary due to the utility’s years of neglect and negligence. To be clear, despite the fact that the proposed penalty is so large, it still falls short of the amount that will be necessary to address the problems that have been identified on PG&E’s system (and indeed, is less than the strict mathematical calculation of penalties that would result under PUC sections 2107 and 2108). Thus, PG&E’s ratepayers will likely incur additional costs related to the utility’s failures. High penalties are justified based on the totality of the facts and circumstances, including PG&E’s “ability to pay.” PG&E should not be allowed, however, to utilize allocation of the funds towards safety improvements as a diminution of the actual penalty amount; instead, any offsets, tax credits, or other monetary relief that PG&E gains through the payment of the improvements and safety enhancements should not be counted as

part of the penalty. In essence, this would make even more money available to the utility to fund the necessary improvements. In the event that any portion of the penalty amount is still available after the necessary improvements and corrections have been completed, that amount should be paid to the State's General Fund. The proposal that PG&E shareholders fund no less than \$2.25 billion as a penalty for their conduct, and that those monies be attributed to the current and future costs associated with safety investments in PG&E gas system, should be implemented by this Commission.

II. PG&E SHOULD BE ASSESSED THE MAXIMUM PENALTY THE UTILITY CAN AFFORD TO PAY

Requiring the utility to pay the maximum penalty it can afford is totally appropriate given the extent of the violations and the harm that resulted. In their filings, interested parties, including TURN and CPSD, demonstrated that the \$2.25 billion penalty is well within the scope of what the utility can afford to pay and remain financially healthy. The amount of the penalty is not only, as PG&E alleges, designed to deter future conduct, but is also designed to address and redress the conduct leading to the violations. Given the totality of the circumstances, the calculation of penalties allowable under PUC sections 2107 and 2108 far exceeds the proposed \$2.25 billion penalty. Indeed, \$2.25 billion represents the absolute minimum of what PG&E should assessed. PG&E's shareholders can "afford" to pay the penalties proposed by CPSD, CCSF, and others, and the Commission should use \$2.25 billion as the minimum assessment.

III. CONCLUSION

This Commission is in a unique position of being called upon to redress a harm that is unprecedented in scope and impact, and the Commission's actions in this regard will send a message not only to those that were directly impacted, but to all regulated entities that they will be held directly accountable for their conduct. In order for that message to resonate, that accountability should be on the utility's shareholders and not passed through to the ratepayers. The Commission's imposition of the maximum penalty that the utility can afford to pay without harming ratepayers sends a clear and deliberate message that this Commission is actively monitoring regulated entities, holding them accountable for their actions, and protecting the state's utility ratepayers.

The corrective measures ordered as part of D.12-12-030 are all the result of the same transactions that led to the incident. Accordingly, PG&E's shareholders – and not its ratepayers – should have to fund the corrective actions and remedial measures that are necessary to ensure that this kind of thing does not happen again. PG&E should be required to pay the maximum penalty, and those monies should be used to correct the long-standing and ongoing deficiencies in PG&E's gas system, beginning with the work that is being undertaken pursuant to R.11-02-019 and in accordance with D.12-12-030. The Commission should order that penalty monies be paid directly to *cover the ratepayer portion of those costs*. All monies that PG&E has collected to date from ratepayers for these improvements should be credited back to the ratepayers, and all future costs should be paid directly from shareholder funds. It is wholly appropriate for the Commission to direct that the penalties assessed in these proceedings be used to pay for the portion of the PSEP costs for Phases I and II that have been allocated to ratepayers. This should include a full refund of amounts already collected from ratepayers, as well as all future costs.

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Respectfully submitted,



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