

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)

**MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION  
FOR PROCEDURAL RULINGS TO GOVERN THESE PROCEEDINGS**

HARVEY Y. MORRIS  
Attorney for the Consumer Protection and  
Safety Division

California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-1086  
Email: [hym@cpuc.ca.gov](mailto:hym@cpuc.ca.gov)

July 8, 2013

70737482

SB\_GT&S\_0032953

**TABLE OF CONTENTS**

	Page
I. INTRODUCTION .....	1
II. CPSD’S RECOMMENDATIONS REGARDING PROCEDURES .....	3
A. CPSD’S NEED TO FILE CORRECTED LEGAL POSITION.....	3
B. PROCEDURES CONCERNING THE APPEALS OF THE PODS .....	4
III. CONCLUSION.....	5

**TABLE OF AUTHORITIES**

	Page
<b>Commission Regulations</b>	
Commission’s Rules of Practice and Procedures	
Rule 11.1(a) .....	1
Rule 14.4 .....	4
Rule 14.4(a) .....	4
Rule 14.4(b) .....	4
Rule 14.4(d) .....	4
 <b>California Regulations</b>	
California Appellate Rules Relating to the Supreme Court and Courts of Appeal	
Rule 8.204(c) .....	5
 <b>Federal Regulations</b>	
Federal Rules of Appellate Procedure	
Rule 32(a)(7)(B) and (C) .....	5

## I. Introduction

Pursuant to Rule 11.1(a) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Consumer Protection and Safety Division (CPSD)<sup>1</sup> hereby submits its motion for two procedural rulings to govern these proceedings. First, CPSD respectfully requests leave to file an Amended Reply Brief in the Fines and Remedies Phase by Monday, July 15, 2013. For this to be possible, CPSD also requests that the Administrative Law Judges (ALJs) issue a ruling requiring parties to file and serve responses to the first part of this procedural motion by 5:00 p. m. on Wednesday, July 10, 2013, so that the ALJs can rule prior to Monday, July 15, 2013 when CPSD proposes that its 10-page Amended Reply Brief would be due.

Second, CPSD requests page limits (in the form of word limits) for the parties' appeals and responses to the Presiding Officers' Decisions (PODs). This second request does not require an immediate ruling from the ALJs. Parties should have the entire 15 days to respond.

The pertinent background for this motion is the following set of circumstances. After stipulating to the facts in the Order Instituting Investigation (OII) in I.11-11-09 (the Class Location OII), the attorneys for CPSD and Pacific Gas and Electric Company (PG&E) signed and filed opening and reply briefs concerning the violations alleged in that proceeding. Subsequently, after extensive discovery and hearings in the OIIs in I.11-02-016 (the Recordkeeping OII) and in I.12-01-007 (the San Bruno OII), the attorneys for CPSD, PG&E and the intervenors signed and filed lengthy opening and reply briefs.<sup>2</sup> Thereafter, after a two-day hearing on the Fines and Remedies Phase in all

---

<sup>1</sup> On January 1, 2013, CPSD officially changed its name to the Safety and Enforcement Division (SED). However, in light of all of the references to CPSD in the previous rulings by the Commission and the Administrative Law Judges (ALJs), pleadings, exhibits, testimony and cross-examination of witnesses and corresponding transcript references, to avoid confusion we will continue to refer to SED as "CPSD" in this brief and through the remainder of this proceeding.

<sup>2</sup> For example, in the Recordkeeping OII, excluding attachments, PG&E's Opening Brief was 163 pages long, PG&E's Reply Brief was 163 pages long, CPSD's Opening Brief was 225 pages long and CPSD's Reply Brief was 153 pages long. In the San Bruno OII, excluding attachments, PG&E's Opening Brief was 149 pages long, PG&E's Reply Brief was 165 pages long, CPSD's Opening Brief was 114 pages long and CPSD's Reply Brief was 119 pages long.

three of these OIIs, on May 6, 2013, the CPSD's Director signed and filed CPSD's Opening Brief. In contrast, attorneys representing PG&E and intervenors signed and filed their respective briefs.

On May 29, 2013, with authorization from CPSD's Director, attorneys representing CPSD signed and filed a motion to strike references to extra-record evidence, which were cited in PG&E's Coordinated Remedies Brief in the Fines and Remedies Phase. On June 3, 2013, the Presiding Officers, ALJs Yip-Kikugawa and Wetzell, granted the motion. On June 5, 2013, the CPSD's Director signed and filed CPSD's Reply Brief. On June 6, 2011, CPSD Director Hagan informed the Process Office that Christopher Clay had become CPSD's attorney of record. Subsequently, the CPUC issued a press release on June 26, 2013, which stated that: General Counsel Frank Lindh had recused himself from any further role in the San Bruno cases; retired Assistant General Counsel Arocles Aguilar will assume the role as the chief advisory attorney in the San Bruno case; and Assistant General Counsel Harvey Morris will continue to lead the attorney team in these cases.<sup>3</sup>

On July 1, 2013, the City of San Bruno filed a motion to strike credits against penalties in the CPSD Director's opening and reply briefs in the Fines and Remedies Phase. Given the unorthodox events that have transpired during the briefing of the Fines and Remedies Phase, and the confusion over which attorneys represent CPSD, CPSD needs to correct certain inaccuracies in statements in its briefs. Therefore, CPSD respectfully requests that the ALJs promptly issue a ruling requiring parties to file and serve responses to the first part of this procedural motion by 5:00 p.m. on Wednesday, July 10, 2013, so that CPSD's position can be clarified on July 15, 2013 before its response would be due to San Bruno's motion to strike.

---

<sup>3</sup> See CPUC's June 26, 2013 News Release, a true and correct copy of which is attached hereto.

## II. CPSD's Recommendations Regarding Procedures

### A. CPSD's Need to File An Amended Reply Brief

In order for CPSD to state its corrected position, CPSD requests that the ALJs permit CPSD to withdraw everything in its Reply Brief filed on July 5, 2013 herein, except for the section entitled “ **III. RESPONSE TO PG&E'S CLARIFICATION OF PROPOSED REMEDIES**” and the **Appendix A** and **Appendix B** accompanying CPSD's Reply Brief (collectively “CPSD's Remedies Response”). In lieu of the withdrawn sections of CPSD's Reply Brief, CPSD proposes that it be permitted to file and serve CPSD's Amended Reply Brief in the Fines and Remedies Phase (CPSD Amended Reply Brief) by 5:00 p.m. on Monday, July 15, 2013. The CPSD Amended Reply Brief would be limited to 10 pages (not counting the reiteration of CPSD's Remedies Response), would completely replace everything else in its current Reply Brief (except for the CPSD's Remedies Response) and would have implications for CPSD's positions in its Opening Brief in the Fines and Remedies Phase. Additionally, based upon CPSD's position given in the CPSD Amended Reply Brief, CPSD would be able to file its response, limited to five pages, to the City of San Bruno's motion to strike (CPSD MTS Response). The CPSD MTS Response would explain how its corrected position in its Amended Reply Brief may moot at least some of the issues raised in the City of San Bruno's motion to strike.

Particularly in light of the fact that CPSD Amended Reply Brief would have implications for CPSD's positions in its Opening Brief, CPSD proposes that the ALJs grant all other parties an opportunity to file a sur-reply brief to the CPSD Amended Reply Brief (except for the CPSD's Remedies Response) by July 22, 2013.<sup>4</sup> Other parties' briefs should be limited to the same page limits as the CPSD Amended Reply Brief (i.e., 10 pages).

---

<sup>4</sup> PG&E and other parties should not have an opportunity to reply to the CPSD's Remedies Response, because it is not being changed at all in the CPSD Amended Reply Brief.

## **B. Procedures Concerning the Appeals of the PODs**

After the PODs are issued, parties may face immense workloads under short time constraints. Therefore, CPSD submits that this should be addressed and managed in advance. Based upon the number of OII proceedings (i.e., 3) and the combined Fines and Remedies Phase of these proceedings, it is clear that the ALJs may issue anywhere from 1 to 4 PODs. Under Rule 14.4(a) of the Commission's Rules, parties may file appeals within 30 days after the PODs have been issued, and under Rule 14.4(b) of the Commission's Rules, any Commissioner may request review of the PODs. Under Rule 14.4(d) of the Commission's Rules, parties may file responses to each appeal or Commissioner request to review PODs within 15 days after the appeal or Commissioner request is filed, and replies to responses are not permitted.

A significant problem is that there are no page limits listed in Rule 14.4. Without knowing how many PODs the ALJs may be issuing, the outcome or timing of any POD, or the number of appeals or Commissioner requests to review PODs, this lack of any page limit in Rule 14.4 could result in hundreds, if not thousands, of pages of appeals and responses. As discussed above, in the Recordkeeping OII and the San Bruno OII, both PG&E's and CPSD's opening and reply briefs exceeded 100 pages (excluding voluminous attachments and not even counting the intervenors' briefs.) CPSD therefore proposes that the ALJs issue a ruling clarifying that there will be a page limit or word count limit on the appeals and responses in advance of the first POD being issued.

CPSD specifically proposes that no appeal may exceed 14,000 words (including footnotes and headings, but excluding title pages, table of authorities and table of contents), and that counsel for each party appealing a POD must sign a certificate certifying the number of words. Similarly, each party responding to an appeal, multiple appeals or request for review of a Commissioner may not exceed the total word count limit of the appeals or the Commissioner request for review to which it is responding, and counsel for each responding party must sign a certificate certifying the number of words. In addition, parties should not file attachments exceeding 10 pages, unless they can

demonstrate good cause for doing so. (Hereinafter, “CPSD’s 14,000 Word Limit Proposal”).

The ALJs should adopt CPSD’s 14,000 Word Limit Proposal for appeals in these heavily litigious proceedings. CPSD’s proposal is based upon the common sense approach from years of experience reflected in Rule 8.204(c) of the California Appellate Rules Relating to the Supreme Court and Courts of Appeal, which is similar to Rule 32(a)(7)(B) and (C) of the Federal Rules of Appellate Procedure. Consequently, there should be little doubt that the ALJs’ adoption of CPSD’s 14,000 Word Limit Proposal for appeals and responses in this proceeding would not be violating any party’s due process rights; it would just require parties to write more concise appeals or responses.

### III. CONCLUSION

For the above-mentioned reasons, CPSD respectfully submits that the ALJs should issue an order shortening time giving parties two days to respond to CPSD’s first proposal, and clarify that parties have the normal 15 days to respond to CPSD’s 14,000 Word Limit Proposal. After reviewing any responses, CPSD further respectfully submits that the ALJs should grant by Friday, July 12, 2013, CPSD’s first proposal to file by July 15, 2013 a corrected, Amended Reply Brief that would not exceed 10 pages, and to give parties one week thereafter to file a reply brief that would not exceed 10 pages.

In addition, CPSD respectfully submits the ALJs should grant CPSD’s 14,000 Word Limit Proposal for appeals and responses in this proceeding.

Respectfully submitted,

/s/ HARVEY Y. MORRIS  
Harvey Y. Morris

Attorney for the Consumer Protection and  
Safety Division  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102  
Phone: (415) 703-1086  
Email: [hym@cpuc.ca.gov](mailto:hym@cpuc.ca.gov)

July 8, 2013





**California Public Utilities Commission**  
505 Van Ness Ave., San Francisco

**FOR IMMEDIATE RELEASE**

**PRESS RELEASE**

Media Contact: Terrie Prosper, 415.703.1366, [news@cpuc.ca.gov](mailto:news@cpuc.ca.gov)

**CPUC COMMENTS ON STAFFING CHANGES TO  
PG&E ENFORCEMENT CASES**

SAN FRANCISCO, June 26, 2013 - The California Public Utilities Commission's (CPUC) President, Michael R. Peevey, and Commissioner Mike Florio, today made the following statement regarding CPUC staffing changes in the Pacific Gas and Electric Company (PG&E) enforcement cases related to the PG&E pipeline rupture in San Bruno, to which they are the lead Commissioners:

As the regulatory body charged with ensuring that the state's natural gas pipeline systems are safely operated and maintained, it is of paramount importance that the CPUC continue to move forward to reach a decision in the PG&E pipeline enforcement cases. We are aware of recent issues surrounding staffing of CPUC attorneys assigned to the cases, and as such, have made internal changes. General Counsel Frank Lindh informed us today that he will recuse himself from his role as chief advisory attorney in the cases, and retired CPUC Assistant General Counsel Arocles Aguilar has agreed to assume that role. We want to express our appreciation to General Counsel Lindh for his work on the cases to date and for his statesmanship in stepping aside, and we welcome Attorney Aguilar back to the CPUC. Further, Assistant General Counsel Harvey Morris has agreed to continue to lead the lawyer team working with Brigadier General (CA) Jack Hagan, Director of the CPUC's Safety and Enforcement Division, on the enforcement cases, which are now awaiting decisions by the Assigned Administrative Law Judges. The Judges will issue their Presiding Officer's Decisions for public comment, to be followed by a vote of the Commissioners, expected in late summer.



Commenting on the staff changes, General Hagan said, “Both the Safety and Enforcement Division and the Legal Division are seeking the same ultimate outcome, which is justice for the people of San Bruno and a safer PG&E pipeline system.”

Added Assistant General Counsel Morris, “While we have had some internal misunderstandings, the lawyer team is committed to working with General Hagan and the Safety and Enforcement Division in the prosecution of PG&E in these important enforcement cases to bring justice to San Bruno and improve pipeline safety in California.”

For more information on the CPUC, please visit [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

###

