

**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 High Population Density.	I.11-11-009 (Filed November 10, 2011) (Not Consolidated)

**RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO  
TO THE CONSUMER PROTECTION AND SAFETY DIVISION'S  
MOTION TO FOR PROCEDURAL RULINGS**

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ATTORNEYS FOR:  
CITY AND COUNTY OF SAN FRANCISCO

July 10, 2013

Pursuant to Rule 11.1(e) and Administrative Law Judges Wetzell and Yip-Kikugawa's July 9, 2013 email ruling, the City and County of San Francisco respectfully submits this response to the Consumer Protection and Safety Division's (CPSD) Motion for Procedural Rulings. The CPSD motion seeks leave to correct its legal position by filing an Amended Reply Brief in the penalties phase of these coordinated proceedings. CPSD proposes that it file its Amended Reply Brief on July 15, 2013 and that other parties file surreplies on July 22, 2013. The motion also seeks an order imposing a word limit on appeals and responses to any presiding officer's decision.

Given the well documented turmoil identified in CPSD's motion, San Francisco supports CPSD's request to file an Amended Reply Brief and establish word limits on any potential appeal and response to a presiding officer's decision. San Francisco believes, however, that it is premature to issue an order regarding the need for supplemental briefing.

**A. The Commission Should Grant CPSD Leave to File an Amended Reply Brief**

The purpose of briefing is to aid the fact finder by directing it to pertinent case law and references to the record supporting findings of fact. These investigations present complex issues of law and fact contained in many volumes of exhibits, written testimony and hearing room transcripts. The reply brief was supposed to be CPSD's last opportunity to clarify its legal position, address legal arguments presented by other parties in their opening briefs and direct the Commission to the most pertinent evidence in the record. As identified by CPSD, the June 5, 2013 reply brief was the product of "internal misunderstandings"<sup>1</sup> and contains "inaccuracies in statements."<sup>2</sup> A simple examination of the June 5, 2013 brief itself belies any notion that it conveys CPSD's legal position. The brief is a mere nine pages long, and lacks any legal citations to rebut the legal arguments presented by PG&E in over 100 pages. No reasonable fact

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<sup>1</sup> CPUC's June 26, 2013 News Release, attached to the CPSD motion.

<sup>2</sup> CPSD motion at p. 2.

finder could determine that the June 5, 2013 reply brief reflects CPSD's *legal* position on the appropriate fines and remedies. CPSD's job in this proceeding is enforce the safety laws and regulations on behalf the public. To do so, CPSD's briefs are supposed to provide the benefit of research and legal argument to the Commission. The June 5, 2013 reply brief distorts the record by advancing a penalty proposal inconsistent with CPSD's position in these investigations. The Commission should allow CPSD to do its job in these important cases by authorizing CPSD to file its Amended Reply Brief.

Leave to file amended pleadings is liberally granted. Courts grant leave to file amended pleadings when it would lead to the "furtherance of justice" and may condition such leave upon "any terms as may be proper."<sup>3</sup> CPSD clearly articulates the unusual circumstances and confusion surrounding the filing of its June 5, 2013 reply brief. Because that brief was the result of internal miscommunications and potential improprieties by CPUC management, CPSD should be given the right to clarify its legal position. This way, CPSD's briefing will accurately reflect its legal position. Denying CPSD leave to file its Amended Reply brief will prejudice CPSD, ratepayers, and the public by depriving it the opportunity to fully present its case to the Commission.

Moreover, there will be no prejudice to PG&E. On May 24, 2013, PG&E responded to the legal arguments advanced in CPSD's opening brief and the opening briefs of other parties. The reply briefs by CPSD and other parties in early June were always intended to be the final briefs in this matter.<sup>4</sup>

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<sup>3</sup> CCP 473(a)(1) ("The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading.... . The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars.").

<sup>4</sup> Parties to the proceedings jointly developed the briefing schedule where the reply brief on fines and remedies was the final brief of these proceedings. See Administrative Law Judges' Ruling Adopting Revised Schedule And Common Briefing Outlines Issued February 4, 2013.

**B. It Is Premature To Determine that Supplemental Briefing Is Necessary**

The purpose of a supplemental briefing is to allow parties to address new issues of law and fact that were not available to the party previously. Generally, supplemental briefing and surreplies are limited to circumstances where the reply brief addresses new matters not previously addressed in the briefing.<sup>5</sup> In fact, “surreplies are disfavored, and normally will be permitted only upon prior invitation by the court.”<sup>6</sup> And, “the moving party must show that the reply brief filed by the moving party raised new arguments that were not included in the original motion.”<sup>7</sup>

So long as CPSD’s Amended Reply Brief addresses arguments made by parties made in their opening briefs, there is no need for additional briefing. Here, neither the Commission nor the parties know the contents of CPSD’s proposed Amended Reply Brief. If on June 5, 2013, CPSD had filed a brief consistent with its earlier litigation position, there would be no need for CPSD’s motion or any ruling on supplemental briefing. If, however, upon receiving CPSD’s proposed Amended Reply Brief, any party determines that supplemental briefing is necessary, the Commission may grant leave to file a surreply in response to *only the new issues* presented in CPSD’s Amended Reply Brief. This should not be seen as an opportunity to relitigate the entirety of the case through additional legal argument and evidence outside the record. Until the Commission and parties have had a chance to review CPSD’s Amended Reply Brief, there is no basis for additional briefing in response to the proposed Amended Reply Brief.

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<sup>5</sup> See U.S. Sup. Ct. R. 15 (“A supplemental brief shall be restricted to *new* matter...”) (emphasis added).

<sup>6</sup> *Wright ex re. Trust Co. of Kansas v. Abbott Laboratories*, 62 F.Supp.2d 1186, 1187 (D. Kan. 1999).

<sup>7</sup> *Stanford v. Potomac Elec. Power Co.*, 394 F.Supp.2d 81, 86 (D.D.C. 2005).

