

**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)

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO  
CPSD'S 14,000 WORD LIMIT PROPOSAL IN JULY 8, 2013 MOTION  
FOR PROCEDURAL RULINGS**

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July 23, 2013

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CPSD's motion<sup>2</sup> asks the ALJs to change the rules for these three OIIs by imposing a 14,000-word limit on any appeal by PG&E of the Presiding Officer's Decision (POD).<sup>3</sup> CPSD

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<sup>1</sup> Pursuant to *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964), PG&E expressly reserves its federal constitutional and any other federal claims and reserves its right to litigate such claims in federal court following any decision by the Commission, if necessary.

<sup>2</sup> Motion of the Consumer Protection and Safety Division for Procedural Rulings to Govern These Proceedings, filed July 8, 2013 (hereinafter, Motion).

<sup>3</sup> On its face, CPSD's motion is party-neutral. CPSD would not, however, need to seek an ALJ ruling to limit the words in its own appeal. Nor is it likely CPSD seeks to restrict the appeal of any of the four allied Intervenors. Thus, the unnamed subject of the motion is PG&E.

fails to show good cause for restricting any appeal by PG&E in a manner not provided by the Commission’s Rules of Practice and Procedure.<sup>4</sup>

Although it is the commissioners’ offices – not the ALJs – that must review any appeal of a POD, in adopting the Rules of Practice and Procedure, the Commission chose not to limit the issues that may be raised or the number of words or pages in appeals in adjudicatory proceedings. *See* R. Prac. & Proc., Rule 14.4(c) (stating only that “[a]ppeals . . . shall set forth specifically the grounds on which the appellant . . . believes the presiding officer’s decision to be unlawful or erroneous”). This contrasts with the Commission’s treatment of comments on proposed decisions in ratesetting cases, which are limited to “factual, legal or technical errors” and are explicitly subject to page limits. *See* R. Prac. & Proc., Rule 14.3(b), (c).<sup>5</sup>

CPSD cites no Commission authority to support imposing a word limit on appeals of PODs, and PG&E is aware of none. In the absence of relevant precedent, CPSD cites word limits used by state and federal appellate courts.<sup>6</sup> Those appellate rules do not sustain CPSD’s proposal. First, the fact that appellate courts use word limits in certain circumstances is irrelevant. As reflected in its Rules of Practice and Procedure, the Commission has made a policy decision contrary to that of these courts. Second, the Commission’s review of PODs is substantively different from the review conducted by appellate courts. Appellate courts do not review a jury or a judge’s findings of fact *de novo* and appeals are typically limited to a relatively narrow range of issues. Unlike appellate courts, the Commission reviews PODs *de novo* as to all issues of both fact and law. As it said in *Investigation of Clear World Commc’ns Corp.*, D.05-06-033, 2005 Cal. PUC LEXIS 221, at \*84, the Commission is “free to consider the record *de novo* and to adopt an alternate decision that amends, alters or reverses the POD. . . . It is the Commission, not the presiding officer, that is responsible for the final decision.”

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<sup>4</sup> While PG&E remains confident the ALJs will hold CPSD to its burden of proof and base their PODs on the record evidence rather than emotional or political considerations, PG&E cannot agree to give up its right to a Commission decision on all issues through an appeal of the PODs.

<sup>5</sup> *See also Rulemaking re Commission’s Rules of Practice & Procedure*, D.86-12-056, 1986 Cal. PUC LEXIS 978, at \*13-14 (“We are interested in knowing, for example, whether parties think the conclusions drawn in the proposed decision are in error because they ignore or misinterpret substantial facts in the record, whether facts or law are misstated in the proposed decision and therefore lead to erroneous conclusions or whether two elements of the proposed decision, which might be correct standing alone, are inconsistent when taken together. This is what we mean when we use the terms ‘factual, legal or technical errors’ in the rule.”).

<sup>6</sup> *See* Motion at 5.

By any measure, these are among the most significant enforcement proceedings the Commission ever has undertaken. They raise a huge number of factual and legal issues of great importance to the Commission, the public, and PG&E and the other parties. CPSD and Intervenor are advocating billions of dollars in penalties – an amount that exceeds by many multiples any penalty ever imposed by the Commission. There have been no word limits up to this point in these OIIs – neither CPSD nor any other party responded to ALJ Wetzell’s suggestion that the parties consider agreeing to page limits for the post-hearing briefs – and CPSD has failed to show good cause to change that now.

The only ground for CPSD’s effort to limit PG&E’s appeal is the possibility that the “parties may face immense workloads under short time constraints.”<sup>7</sup> The potential workload of CPSD or other parties does not provide a legitimate basis for truncating PG&E’s due process right to appeal the PODs to the full extent permitted by the Commission’s rules and the law.<sup>8</sup> While restricting PG&E, CPSD’s motion would give CPSD and its four allied intervenors together five times as many words. CPSD and Intervenor have been aligned against PG&E on all the legal and factual issues in the OIIs except the exact amount and make-up of their proposed penalties.<sup>9</sup> Yet, under CPSD’s proposal, each of them would receive the same number of words as PG&E, and combined five times PG&E’s.

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<sup>7</sup> Motion at 4.

<sup>8</sup> Contrary to what some parties seem to believe, as the accused in these proceedings, PG&E is the only party with due process rights. The due process clause provides: “A person may not be deprived of life, liberty, or property without due process of law . . . .” Cal. Const., Art. I, § 7(a). *See also Ryan v. Cal. Interscholastic Fed’n*, 94 Cal. App. 4th 1048, 1059 (2001) (“[T]he strictures of due process apply only to the threatened deprivation of liberty and property interests deserving [constitutional] protection. . . .”).

<sup>9</sup> Intervenor’s briefs are replete with statements that CPSD is correct in its allegations. *See, e.g.*, TURN Records OII Opening Brief (OB) at 17 (“CPSD has convincingly demonstrated the violations alleged in its reports and testimony.”); San Bruno Records OII Reply Brief (RB) at 20 (“San Bruno urges the Commission to adopt findings consistent with the issues identified in CPSD’s Incident Investigation Report, CPSD’s Opening Brief and Appendix A, CPSD’s Reply Brief along with any violations related to such issues advocated by CPSD.”); DRA Remedies OB at 2 (“CPSD has proved thousands of violations with an enormous amount of solid evidence painstakingly collected, analyzed, and presented.”); DRA Remedies RB at 4 (“Every party, except PG&E, recognizes that PG&E faces minimum fines in the tens of billions of dollars, and maximum fines exceeding several hundred billion dollars[.]”); CCSF Remedies OB at 1 (“CPSD presented extensive and compelling reports and testimony outlining PG&E’s violations and the harms and risk they created.”); TURN Remedies RB at 26 (“The testimonies and briefs of CPSD and intervenors show that potential penalties for violations and disallowances for imprudence could well exceed PG&E’s financial resources.”).

The ALJs may issue as many as four lengthy and complex PODs that together may total a thousand pages or more. The possibility that CPSD or other parties may be burdened in responding to “lengthy” appeals cannot justify placing constraints on PG&E’s right to appeal all legal and factual issues in the PODs and thereby limit the Commission’s *de novo* review. The fact that these proceedings have been heavily litigated does not argue for word limits, as CPSD contends.<sup>10</sup> Rather, it underscores the broad scope and complexity of the OIIs, and the corresponding detriment to PG&E if its appeal rights are limited. Imposing word limits on PG&E’s appeals of the PODs – contrary to the Commission’s own rules and precedents – would be inconsistent with PG&E’s due process rights. CPSD’s 14,000 Word Limit Proposal should be rejected.

Respectfully submitted,

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<sup>10</sup> See Motion at 5.