

**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)

**OPPOSITION OF THE UTILITY REFORM NETWORK
TO THE MOTION OF PACIFIC GAS AND ELECTRIC COMPANY
TO REOPEN THE EVIDENTIARY RECORD**



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In accordance with the July 19, 2013 e-mail ruling of Administrative Law Judges Yip-Kikugawa and Wetzell, The Utility Reform Network (“TURN”) submits this Opposition to the Motion of Pacific Gas and Electric Company (“PG&E”) to Reopen the Evidentiary Record (“Motion to Reopen Record” or “Motion”).

TURN urges the Commission to deny the Motion, which unequivocally fails to satisfy the standard for such motions in Commission Rule of Practice and Procedure (“Rule”) 13.14(b). In addition, the Motion should be denied for the reasons stated in the well-reasoned Response of the City of San Bruno (“San Bruno’s Response”) dated July 25, 2013. TURN’s Opposition will supplement San Bruno’s Response and avoid repeating the cogent arguments in that pleading.

I. PG&E’S MOTION TO REOPEN THE RECORD FAILS TO MEET THE STANDARD FOR SUCH MOTIONS IN RULE 13.14(B)

Motions to reopen the evidentiary record in Commission proceedings are governed by Rule 13.14(b), which provides, in relevant part:

(b) A motion to set aside submission and reopen the record for the taking of additional evidence . . . shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced.

Accordingly, PG&E is required to specify facts that justify reopening the evidentiary record, including “material changes of fact and law” that have occurred since the conclusion of the evidentiary hearings.

PG&E has failed to point to any material change of fact or law in the Amended Reply Brief of the Consumer Protection and Safety Division (“CPSD”) that justifies reopening the evidentiary record for any purpose – let alone the submission of additional rounds of testimony, further discovery on that testimony, and additional evidentiary hearings. CPSD’s Amended Reply Brief does not present any new material facts or law that warrant additional evidentiary

proceedings. Instead, CPSD presents a modified argument regarding the appropriate financial consequences¹ that the Commission should impose on PG&E. In presenting this modified argument, CPSD does not seek to inject any new facts into the evidentiary record. Rather, CPSD relies entirely upon the evidentiary record that closed on March 5, 2013, when evidentiary hearings in the coordinated penalty phase of these proceedings concluded. PG&E has not shown, and cannot show, that CPSD's modified position is based on new factual assertions and, therefore, PG&E has not met the Rule 13.14(b) standard for reopening the evidentiary record.

PG&E's disagreement with CPSD's interpretation of the evidentiary record is not a proper basis for reopening that record. PG&E claims that CPSD's Amended Reply Brief contains "factual errors." (Motion, p. 5). When parties disagree about the proper interpretation of the evidentiary record, the proper recourse is to explain the disagreement in a responsive pleading.² If every disagreement about the meaning of a witness's testimony that surfaced in post-hearing briefs were grounds to reopen the evidentiary record, CPUC proceedings would have no hope of concluding within the statutorily prescribed time periods.

II. PG&E HAD A FULL AND FAIR OPPORTUNITY TO PRESENT, REBUT, AND CROSS EXAMINE FACTUAL EVIDENCE RELEVANT TO THE APPROPRIATE FINANCIAL CONSEQUENCES FOR PG&E'S VIOLATIONS

Rather than meet the Rule 13.14(b) standard, PG&E's Motion makes a different claim. PG&E asserts that, if it had known that CPSD was going to make the financial consequences proposal in its Amended Reply Brief, PG&E would have been entitled to present additional

¹ As TURN has previously explained in its briefs in this coordinated phase of the cases, TURN uses the term "financial consequences" to refer to, on the one hand, "fines" and "penalties" (i.e. payments to the state General Fund) and, on the other hand, disallowances and other remedies. Some other parties and witnesses (such as the Overland witnesses) appear to use the term "penalty" for this broad purpose.

² As San Bruno's Response (p. 10) points out, PG&E has already used its Motion to Reopen as a vehicle for presenting its arguments in opposition. The Ruling on the Motion should make clear that PG&E's arguments in opposition to CPSD's Amended Reply Brief will be disregarded and should instead be made in PG&E's responsive brief.

testimony in the evidentiary process. This argument is completely without merit, for several reasons.

First, the argument is irrelevant. As explained in the previous section, the issue presented by this Motion is whether PG&E has met the Rule 13.14(b) standard. PG&E's failure to do so should be decisive.

Second, PG&E ignores the adopted process and schedule for the financial consequences issues in these proceedings. That process and schedule called for all parties, including PG&E, to develop a full factual record of testimony and cross examination related to the financial consequences issues before any party submitted their positions and arguments on these issues. CPSD presented Overland's analysis of PG&E's ability to fund new equity, but did not submit testimony describing its full and final recommendation of financial consequences. PG&E in turn, took full advantage of its procedural opportunities by submitting testimony in response to Overland on topics and by witnesses of its choosing and by conducting extensive cross examination of Overland's witnesses. This sequencing made perfect sense in that it gave parties an opportunity to review and digest the evidentiary record regarding the financial consequences issues, as well as all the opening and reply briefs on the "violations" issues in the three cases, before formulating final positions and arguments regarding the appropriate financial consequences. Thus, when PG&E had the opportunity to present rebuttal testimony in response to the Overland testimony and when it conducted cross examination, it, like all the parties, knew the evidentiary record would be used for financial consequence recommendations that would be presented later.³ Under these circumstances, the fact that CPSD has now used the evidentiary

³ Thus, the notion that PG&E should have an opportunity to introduce ratings agency reports that analyze CPSD's revised proposal (Motion, p. 8) does violence to the adopted process and schedule which never allowed such testimony on the final financial consequences proposal of any party (including PG&E).

record to support a financial consequences proposal that PG&E dislikes is not a proper basis for seeking to reopen that record.

Third, the fact that CPSD has modified its position regarding financial consequences changes nothing with respect to the adequacy of the evidentiary record. If CPSD had submitted its modified proposal in its original Opening Brief on Fines and Remedies and PG&E had made this same motion in response, such motion would be equally without merit. In fact, as San Bruno's Response (p. 9) points out, the structure and aggregate size of CPSD's modified recommendation is quite similar to TURN's proposal.⁴ The fact that PG&E made no motion to reopen the record in response to TURN's recommendations strongly suggests that PG&E's Motion is less about supposed procedural unfairness and more about its displeasure that CPSD is now proposing financial consequences that would actually serve the deterrent and retributive purposes that Commission-imposed financial consequences are designed to serve.

III. PG&E'S MOTION IS REplete WITH ERRORS

Most of PG&E's Motion is irrelevant because, as discussed above, PG&E has failed to meet the threshold standard of demonstrating that CPSD's Amended Reply Brief is based on "material changes of fact or law." Nevertheless, in an abundance of caution, TURN will correct several erroneous statements in PG&E's motion.

First, PG&E (p. 3 and footnote 5) is wrong that Overland's original report was limited to the amount of new PG&E equity that could fund a "fine" paid to the General Fund. In fact, Overland's original report referenced both "fines" and "penalties", the latter term clearly being

⁴ As TURN understands it, CPSD proposes a \$300 million fine paid from the General Fund, new net contributions of \$1.515 billion from PG&E shareholders for Pipeline Safety Implementation Plan ("PSIP") expenditures, and shareholder payments for audits and other remedies. TURN's May 6, 2013 Opening Brief on Fines and Remedies (pp. vii-x) proposed a \$670 million fine paid to the General Fund, \$1 billion for new net shareholder contributions for PSIP expenditures, and \$50 million of shareholder payments for audits and other remedies.

used to encompass ratemaking disallowances. Pages 12 and 13 of Overland’s original report discuss the “structure of the penalties” and explicitly address the possibility that some of the “penalties” could take the form of disallowances of PSIP expenditures.⁵

Second, PG&E (p. 3) is wrong in claiming that the Overland analysis of the amount of new equity that PG&E could raise encompassed “all other unrecovered and unrecoverable costs” (emphasis added). As San Bruno’s Response (pp. 4-5) explains, this misstatement by PG&E has already been addressed thoroughly in the parties’ briefs. In particular, TURN’s June 7, 2013 Reply Brief (pp. 29-30, 37-44) contains an extensive discussion of the Overland testimony showing that Overland identified a variety of costs, such as the PSIP contingency that was disallowed in D.12-12-030, that would not be appropriate to count against Overland’s \$2.25 billion figure.

Third, PG&E (p. 8 and footnote 25) blatantly misrepresents the record when it repeats in this Motion the bogus claim that Overland did not dispute that items such as right of way management costs and gas distribution expenditures above rate case authorized levels should be credited against the \$2.25 billion. As TURN explained in its Reply Brief (pp 38-40), PG&E’s attorney never gave the Overland witnesses an opportunity to dispute such points. When PG&E’s examination was concluded and Commissioner Florio finally gave Mr. Lubow that opportunity with respect to PG&E’s claimed right of way costs, Mr. Lubow explained that he had never seen the numbers that PG&E’s counsel presented him and then gave general reasons why some or all of such costs should not be credited against the \$2.25 billion.⁶

Fourth, PG&E (p. 4) reads out of context a statement in CPSD’s Amended Reply Brief regarding contingency expenses. PG&E claims that CPSD made a factual error when it stated

⁵ Ex. Jt. 51, pp. 7, 12-13.

⁶ Sealed Tr., vol. 14, pp. 1427-1428.

that CPSD believed PG&E was unlikely to recover the contingency expenses that were disallowed in D.12-12-030. The full paragraph in CPSD's Amended Brief shows that CPSD was interpreting that Commission decision and not offering a factual claim. As CPSD explained (p. 4), the Commission found that PG&E's projects already included an implicit allowance for unexpected cost overruns and therefore the Commission concluded that the contingency was not an appropriate cost of service. PG&E did not file an application for rehearing of D.12-12-030, and thus the Commission's finding that PG&E's cost estimates were excessive by \$380.5 million is final and not subject to re-litigation in this proceeding. CPSD was merely explaining the implications of this final Commission determination.

IV. CONCLUSION

For the reasons set forth above and in the previously filed Response of San Bruno, PG&E has failed to meet the standard in Rule 13.14(b) for reopening the evidentiary record and submitting additional testimony. Accordingly, its Motion should be denied.

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Respectfully submitted,

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