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)

RESPONSE OF THE CONSUMER PROTECTION AND SAFETY DIVISION IN OPPOSITION TO PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO REOPEN

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I. INTRODUCTION

Pursuant to Rule 11.1(e) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules) and Administrative Law Judges (ALJs) Yip-Kikugawa's and Wetzell's July 19, 2013 e-mail ruling requiring responses to be filed by July 26, 2013, the Consumer Protection and Safety Division (CPSD)[1] submits its response in opposition to Pacific Gas and Electric Company's (PG&E) motion to reopen evidentiary record in the Fines and Remedies Phase (F&R Phase). (Hereinafter, PG&E's Motion to Reopen). PG&E's Motion to Reopen was filed in response to CPSD's Amended Reply Brief (CPSD's ARB), where, for the first time, the attorneys representing CPSD for more than 2 ½ years in the three above-captioned Orders Instituting Investigation (OIIs), joined CPSD's relatively new Director, General Hagan, in stating CPSD's corrected legal position for the appropriate statutory penalties and shareholder disallowances that PG&E must pay as required by law and by the clear evidence proving the violations in these OIIs.

PG&E maintains that CPSD's corrected legal position concerning PG&E's payments for the OII violations "increases by approximately $1.8 billion" over CPSD's original proposal to an alleged total of more than $4 billion of shareholder costs. (PG&E's Motion to Reopen, pp. 2, 9). To make this assertion, PG&E's Motion to Reopen, p. 4, cites the CPSD's superseded CPSD Remedies Reply Brief, pp.3-4, and makes unsupportable assumptions that there are not overlapping costs. In fact, CPSD's position in CPSD's ARB is that PG&E should pay $2.25 billion, not $4 billion in fines and remedies. The amount of CPSD's $2.25 billion recommendation that PG&E should pay is broken down as follows: 1) $635 million, which the Commission disallowed PG&E, when the Commission's Decision (D.) 12-12-030 approved Phase I of PG&E's Pipeline Safety Enhancement Program (PSEP) (minus the $200 million PG&E has

[1] On January 1, 2013, CPSD officially changed its name to the Safety and Enforcement Division (SED). However, for the sake of convenience, we will continue to refer to SED as "CPSD" in this brief and through the remainder of this proceeding.

already raised in 2012 to pay CPUC-imposed penalties); 2) a minimum fine of $300 million to the General Fund for violations in these OII proceedings; and 3) $1.515 billion to pay for the ratepayers' share of PG&E's PSEP costs in Phase I and certain remedies CPSD has proposed , with any remaining amounts being a credit for ratepayers when PG&E submits its Phase II PSEP costs. See CPSD's ARB, pp.1-4.

PG&E completely confuses evidence with recommendations. Nothing has changed with respect to the evidence in the records of the three OIIs or the F&R Phase. Neither CPSD's recommendations directed to the Commission - nor those of any other parties - constitute or create evidence The only thing that has changed is the CPSD recommendations that depend on evidence and the law. This change creates no justification for PG&E to produce additional evidence.

Although the CPSD has supported PG&E's and other parties' right to file a responding brief to CPSD's corrected position in CPSD's ARB, PG&E has provided no basis to lawfully support reopening the record in the F&R Phase of this proceeding. Significantly, in CPSD's ARB, CPSD relies exclusively on the existing record, existing legal authorities, and the Commission's D.12-12-030, just as the intervenors' opening briefs have done. Therefore, if CPSD had taken its current position at the time when CPSD's and the intervenors' opening briefs were due in the F&R Phase, PG&E would have had no basis for moving to reopen the record based on CPSD's recommendation change.

In addition, PG&E's Motion to Reopen is not legally justifiable, because: it does not meet the standards of Rule 13.14(b); would go far beyond the scope of the issues in the three OIIs by opening them up to a plethora of new issues; would vitiate the rights of all other parties by recommending that CPSD and other parties have only 21 days to test and submit any additional evidence with no evidentiary hearings (PG&E's 21-Day Proposal); and would unnecessarily prolong these adjudicatory proceedings because the motion to reopen the record inevitably means that new evidentiary hearings and briefs would be necessary.

II. PG&E HAS NOT SATISFIED THE REQUIREMENTS OF RULE 13.14 OF THE COMMISSION'S RULES TO REOPEN THE RECORD IN THIS PROCEEDING

A. Rule 13.14 Motions to Reopen Are Not Routinely Granted

Rule 13.14 (b) requires that a motion to reopen the record must specify the facts justifying the motion, including material changes of fact or law to have occurred since the conclusion of the hearing and "shall explain why such evidence was not previously adduced." In support of its claim that the Commission regularly reopens the evidentiary record, PG&E claims that the standard is where "material changes of fact or of law" have occurred and PG&E cited three examples of Commission cases, which reopened the record but stated nothing suggesting that it was routinely or regularly done. *See* PG&E Motion to Reopen at page 3 & n. 4.[2] However, PG&E fails to distinguish between material changes in the facts and law (e.g, a statutory change), and changes in a legal position in a brief. The ALJs have already granted CPSD the right to file its ARB and provided that PG&E and others could file responding briefs. As discussed below, PG&E fails to adequately explain why it needs to submit additional evidence. Moreover, PG&E's 21-Day Proposal would undermine the rights of all parties to conduct meaningful discovery, provide contrary testimony, and cross-examine PG&E's witnesses, which are integral to the development of an evidentiary record. Therefore, while all of this process could be accommodated (albeit in a much longer time period than 21 days), the Commission requires that a party must provide a "convincing case" why this considerable delay in submitting this material was unavoidable. *See* D.11-11-008, 2011 Cal. PUC LEXIS 516 at * 79-80.

Most of the material is not so new that PG&E could not have offered it sooner. "Such a showing is required under Rule 13.14 of the CPUC's Rules of Practice and Procedure." *Id.* at *80. Moreover, it is time to resolve this case now rather than have it

[2] In all the three case cited in PG&E's n. 4, the Commission required an evidentiary hearing on the evidence that was the subject of the motion to reopen. *See, infra* at p. 16. Thus, they are contrary to PG&E's 21-Day Proposal in its Motion to Reopen.

drag on by reopening the record and have all of the resulting discovery, new witnesses and cross-examination.

B. PG&E's Mischaracterizations of Events and Evidence Do Not Provide a Convincing Case for Reopening the Record

PG&E maintains that it has not had an opportunity to respond to the purported facts now relied upon by CPSD. *See* PG&E's Motion to Reopen, pp. 3, 9. PG&E is wrong. Although CPSD's corrected position is new, it is not based upon any new facts or new laws. *See, e.g.,* CPSD's ARB, pp. 1-8. It is based upon CPSD's legal team's assignment back to the case, where the legal team could provide the legal analysis for CPSD and could sign CPSD's ARB in coordination with General Hagan. However, the position that there should be a fine paid to the General Fund is not a new issue, for which PG&E did not have an opportunity to respond. PG&E's CRB was in response to CPSD and intervenors, and each of the intervenor's opening briefs (OB) recommended that PG&E pay a fine to the General Fund. The recommendations ranged from the low end of $550 million, as part of the remedies recommended by the Division of Ratepayer Advocates' (DRA) OB, pp. 3, 4 and 19 to the high end of $1.250 billion recommended by The City of San Bruno's (San Bruno) OB, pp. 26 - 28. CPSD's ARB's recommended fine – a minimum of $300 million to the General Fund, sets an even lower end of the range of fines. But, as stated, in CPSD's ARB, pp. 5-8, the minimum $300 million fine is clearly warranted.

PG&E relies upon four factual issues that it attempts to justify reopening the record, but none of these purported facts supports reopening the record.

1. The $380.5 Million Contingency Amount

PG&E contends that it needs to reopen the record, because it needs to rebut CPSD's claim in CPSD's ARB that the $380.5 million contingency in PG&E's Pipeline Safety Enhancement Program (PSEP) should not count toward the $2.25 billion capital needs of PG&E. *See* PG&E's Motion to Reopen, pp. 4, 5, 7, and 8. Once again, PG&E already had an opportunity to respond to this issue in PG&E's CRB, because it was raised in DRA's OB, p. 19, n. 71; and The Utility Reform Network's (TURN) OB, p. 5. Most

importantly, CPSD's ARB , p. 4 relied upon the Commission's finding in D.12-12-030, p.98, which had rejected the contingency amount of $380.5 million, because PG&E's "PSEP was already biased to the high end of the expected cost range" and, therefore, already includes an implicit allowance for unexpected cost overruns." The Commission also stated in D.12-12-030, p. 84: "Were we to grant PG&E's request for a substantial contingency allowance and top of already generous cost forecasts, PG&E would have no incentive [to manage the PSEP efficiently]." PG&E obviously had a chance to challenge on rehearing the Commission's finding, but PG&E chose not to do so. PG&E cannot now collaterally attack the final decision or its findings. Cal. Pub. Util. Code § 1709.

2. Other Costs PG&E's Shareholders have incurred in the past, such as Gas Accord V related costs, are irrelevant to Overland's Financial Analysis and to the Evidence in these Proceedings

One of the items PG&E seeks to introduce is the "actual and forecast gas transmission costs above the adopted Gas Accord V amounts." (PG&E Motion, p. 5.) The Gas Accord V settlement was adopted in the 2011 Gas Transmission and Storage (GT&S) case. PG&E now claims that it did not raise these "other" costs related to Gas Accord V "because those costs did not appear to be relevant to Overland's analysis." (Id., p. 10.) PG&E's initial assessment is correct – Gas Accord V costs are not relevant to Overland's analysis.

Gas Accord V dealt with "actual and forecast gas transmission costs" adopted ***as of 2011***. Overland's analysis considered PG&E's "ability to raise equity capital" ***in the future – that is, 2013-2014***.[3] Overland's analysis was based on PG&E's own projections of its financial condition as of the date Overland issued the report in August, 2012. (Exhibit Joint 51, p. 1.) Thus, because Gas Accord V occurred prior to Overland's

[3] Overland Consulting's witness, Howard Lubow, believes that PG&E would raise equity capital by issuing "tranches" of new shares over a period of less than one year. (RT 1384:2-6) Presumably this issuance would occur within one year of the Commission decision, whenever it is adopted. CPSD expresses no opinion about PG&E's ability to raise equity capital for Phase II, or how much, but presumably PG&E could raise equity above $2.25 billion if future years are considered (2015 and beyond). Overland's analysis was limited to the immediate future.

analysis, Overland was aware of Gas Accord V and accounted for its effect when making its estimate of PG&E's ability to raise equity capital in the future.

PG&E's initial assessment that Gas Accord V costs were irrelevant remains correct; because these costs do not affect Overland's estimate that PG&E could issue $2.25 billion in new equity to fund penalties. Because Gas Accord V was adopted in 2011, Overland was well aware of it and accounted for it in its analysis of PG&E's future ability to raise equity capital. PG&E has had a full opportunity to test Overland's testimony at hearings and to present its own evidence.

3. PG&E was aware on August 21, 2012, that Overland stated that PG&E had already raised equity capital in 2012 to pay an anticipated fine, yet failed to correct the alleged error until now

PG&E claims that CPSD made a mistake of fact when it alleged that PG&E has already raised $200 million in 2012 to pay an anticipated fine. (PG&E's Motion to Reopen, p. 6.) PG&E requests permission to correct "CPSD's error", but never provides any explanation why it waited until now, ***almost one year after it first learned of the "error"***, to make the correction.

In its Financial Analysis dated August 21, 2012, Overland stated that PG&E CFO Kent Harvey stated in an earnings call with investors that PG&E had raised $200 million in equity capital to pay an anticipated fine. (Joint 51, p. 10.) (Overland revised the amount from $300 million to $200 million based on PG&E data request responses received subsequent to the filing of the August 2012 report. PG&E could easily have corrected what it now claim is the "mistake" in a data request response, but did not.) (Joint Exhibit 53, p. 22.) The transcript of the earnings call is a publicly available document, which PG&E could have rebutted if it wished, and Overland again referenced this amount at page 22 of its rebuttal testimony. (Joint Exhibit 53.) CPSD did not misquote the earnings call transcript and did not make an "error" when it relied upon the statement in Overland's report. Perhaps CFO Kent Harvey misled PG&E's investors when he made the statement, but CPSD did not err when it relied upon the fact that he

made the representation that PG&E had raised $200 million in 2012 to pay gas-related penalties.

PG&E was provided clear and unambiguous notice of this allegation, almost a year ago and had plenty of opportunities to correct the record, and yet failed to do so. No new facts have been alleged – and no mistakes have been made – thus there is nothing to justify reopening the record to permit a correction on this issue.

4. PG&E'S Quotes the Credit Agencies Out-of- Context

PG&E's Motion to Reopen, p. 6, states that when considering CPSD's proposed penalty, the Commission also should consider the ratings agencies' assessments of the impact that CPSD's proposed penalty could have on PG&E's financial condition and its ability to raise capital to fund ongoing operations and infrastructure improvement. As the basis for PG&E's position that the record should be reopened to include recent ratings agency reports, it provides quotes from both Standard & Poor's and Moody's that are clearly out of context.

PG&E's quote from the bulletin, released by Standard and Poor's on July 17, 2013, conveniently leaves out its concluding statement that emphasizes that adoption of the CPSD's recommended penalty by the CPUC would not alter PCG's credit ratings:

> Based on our analysis, the penalty, if adopted, would decrease the funds from operations to debt ratio by about 50 basis points, resulting in financial measures that still remain in line with our expectations at the current rating. This assumes that the company continues to meet its commitment to maintain its regulated capital structure even if that requires additional material equity issuances.

This conclusion is consistent with a statement made by Standard and Poor's on December 15, 2011 that was introduced into the record nearly one year ago:

> Although the financial profile may sustain additional out-of-pocket costs or fines that are larger than we anticipate, management's commitment to issue equity to pay any future fines backstops the consolidated significant financial profile.

PG&E also quotes in its motion an announcement released by Moody's on July 10, 2013. Moody's concluded its announcement with the following statement:

> Though we believe the penalty amount is still likely to be an amount that PG&E can finance with equity, thus protecting debt holders and credit quality, there is an increasing potential that the politics could lead to a surprising outcome and impair PG&E's credit quality.

Both Standard and Poor's and Moody's maintained PG&E's investment grade credit ratings and stable ratings outlooks after reviewing CPSD's revised recommendation. In fact, neither of these ratings agencies even adjusted PG&E's rating outlook. This is far from new evidence and is not sufficient basis to reopen the record for an entire proceeding. As such, the PG&E's request to reopen the record should be denied.

On July 16, 2013, CPSD's ARB was filed. Pursuant to Rule 13.9 of the Commission's Rules, the Commission should take official notice of PG&E's stock market prices on the New York Stock Exchange, because the prices are easily verifiable and not subject to dispute. On July 16, 2013, PG&E's price closed at $46.37/share. On July 17, 2013, it dropped $1.23/share down to $45.14/share, and each day thereafter, it closed up or down from that price, but it never closed below $45.00/share. As of July 26, 2013, PG&E's stock price closed at $46.32/share. In the past year, PG&E's stock price ranged from a 52-week low of $39.40 to a 52-week high of $48.50. *See* Declaration of Darryl J. Gruen and Appendices 3 and 4 accompanying this Response.

CPSD takes seriously the need to keep PG&E creditworthy. That is why CPSD had proposed that a combined F&R Phase was necessary in the three above-captioned OIIs. CPSD also takes very seriously its enforcement role when utilities endanger the public by not meeting their safety obligations under Cal. Pub. Util. Code § 451 and the CPUC's pipeline safety regulations under the CPUC's General Order No. 112 through 112-E. CPSD believes that credit ratings agencies and investors in the stock market understand that when PG&E has neglected its transmission pipelines for decades, has deferred maintenance, cut safety budgets and failed to keep accurate records, such that

one of its transmission pipelines in a densely populated area in San Bruno has exploded, resulting in eight deaths 58 injuries, the destruction of 38 homes and damage to 70 other homes, that, the CPUC must perform its constitutional and statutory duty to impose a significant fine and disallowance on PG&E.

The fact that PG&E's stock prices have not plunged and the credit rating agencies maintained PG&E's investment grade credit ratings and stable ratings outlooks, after reviewing CPSD's revised recommendation, shows that rating agencies have already factored this penalty into their analyses. Moreover, CPSD's corrected position in CPSD's ARB concerning PG&E's fines and remedies should not logically harm the CPUC's reputation with the financial community with regard to PG&E or any other utility, because PG&E's catastrophe in San Bruno was the worst of any catastrophe in the history of California gas or electric utilities. CPSD's ARB has not caused PG&E's stock price to take a nosedive. PG&E's continues to enjoy investment grade ratings, and no other utility in California needs to be concerned about CPSD's corrected position.

C. PG&E Failed to Present Evidence In a Timely Manner, Even though PG&E Was On Notice that Costs Are An Issue in This Proceeding

PG&E argues that it did not submit testimony relating to PSEP and "other" costs before now because it did not consider the costs to be relevant to either Overland's original report or CPSD's penalty proposal. (PG&E Motion to Reopen, p. 9.) PG&E has now changed its mind and seeks to enter new testimony relating to "other" costs. According to PG&E, the reason it did not seek to submit testimony on these "other" costs is that "PSEP or other costs…did not appear [to PG&E] to be relevant to Overland's analysis."[4] (Id., p. 10.) PG&E claims (with no support) that it thought the sole issue being considered by Overland was "fines" but not other shareholder responsibilities. This logic is not persuasive.

[4] Oddly, PG&E has in fact submitted testimony relating to PSEP costs. See Appendix C of Hearing Exhibit PGE-1A. It is not clear why PG&E now claims it was prevented from doing so.

PG&E chose not to submit testimony relating to "other costs", despite the fact that it had many opportunities to do so. For example, PG&E amended Jane Yura's testimony on January 14, 2013, adding Appendix C entitled "Gas Transmission Shareholder Spend (Expense) – 2010-2012". CPSD did not object to the amended testimony of Jane Yura, because PSEP costs are (tangentially) related to the San Bruno incident. However, had PG&E sought before now to introduce evidence of "other" costs NOT related to San Bruno, CPSD would have objected that they are beyond the scope of the OIIs, as described more fully below. (i.e., one of the "other" costs PG&E seeks to introduce is related to the encroachment of residential homes in the right-of-way of PG&E's gas transmission lines, completely beyond the scope of these OIIs.)

In any event, the test should not be what PG&E subjectively believed, but of what PG&E was objectively on notice. PG&E can distort the facts to allege that it had a belief, no matter how unreasonable. But it is beyond dispute that PG&E was objectively on notice that San Bruno-related costs would be an issue in this proceeding. There are many, many examples of where the issue was raised, beginning with the OIIs.

For example, I.12-01-007 states: "We will specifically consider what monetary fines and other remedies are appropriate to ensure that a catastrophe of this type does not occur again." (Emphasis added. I.12-01-007, p. 3.) The Commission further stated that it will consider "other appropriate remedies under the law." (Id., p. 9.) Finally, the Commission explicitly stated that evidence of costs stemming from the San Bruno explosion and recordkeeping deficiencies could be significant and might become evidence in this proceeding:

> "[W]e place PG&E on notice that the Commission will decide in a separate proceeding whether PG&E ratepayers or shareholders, or both, will pay for PG&E testing, pipe replacement, or other costs. Some costs may stem from the San Bruno pipe rupture or from recordkeeping deficiencies, both of which could be significant. We also place PG&E on notice that in the rulemaking the Commission may take note of the record evidence in this investigation." (Id., p. 11.)

In another example, one of the recommendations in CPSD's Staff Report was that PG&E use $95,372,000 in underspending for capital expenditures to "fund future gas transmission and storage capital expenditures before it seeks additional ratepayer funds going forward." (Exhibit CPSD-1, p. 168.) CPSD also recommended that PG&E should use "$429,841,000 in revenue collected since 1999 that is above and beyond what it required to earn its authorized return on equity, to fund future gas transmission and storage operations before it seeks additional ratepayer funds going forward." (Ibid.) These recommendations are that PG&E should use shareholder funds on PG&E's future gas transmission costs (that would otherwise be borne by ratepayers), thus putting those future costs squarely at issue.

A further example is Overland's Financial Analysis, which was submitted on August 21, 2012. Overland stated: "While not the main focus of this analysis, we realize another area of concern for CPSD Staff is the company's proposed Pipeline Safety Enhancement Plan ("PSEP"). We have included a section on the potential financial impacts of recoverable/nonrecoverable costs." (Emphasis added. Joint Exhibit 51, p. 1.) Overland also quoted from a Standard & Poor ratings report that stated: "Although the financial profile may sustain additional out-of-pocket costs or fines that are larger than we anticipate…" (Emphasis added. Joint Exhibit 51, p. 3.) In looking at the financial health of the company, Overland made the following assumption: "all 2012 PSEP expenses were assumed to be nonrecoverable for purposes of the January 2012 financial forecast." (Joint Exhibit 51, p. 5.) Overland included charts on pages 4-5 of its report that included "PSEP Forecast Costs", "Financial Forecast (assuming full PSEP recovery)", and "Financial Forecast (assuming partial PSEP recovery)". Finally, Overland explicitly stated that PSEP costs were an issue:

> "While the purpose of our analysis is not to make qualitative judgments regarding whether, and the extent to which PSEP costs should be deemed recoverable by the CPUC, we note that the rating agencies have made clear that they expect the disciplinary actions imposed by the CPUC will likely be a material one-time cost but not a chronic drag on earnings." (Emphasis added. Joint Exhibit 51, p. 6.)

Here, Overland is clearly stating that the disciplinary actions imposed by the CPUC might include PSEP costs that would be deemed unrecoverable. Thus, Overland's August 2012 report clearly considered the impact of unrecoverable costs on PG&E's financial health, placing those costs at issue in this proceeding.

Further attesting to fact that PG&E should have been aware (and actually was aware) that PSEP costs were an issue is the fact that PG&E's witness Fornell read Overland's August 21, 2012, Financial Analysis as being focused on both fines and costs disallowances. Mr. Fornell stated: "Overland's report estimates the equity capital PCG might raise to fund penalties, inclusive of both fines and cost disallowances, imposed by the CPUC." (Emphasis added. Joint Exhibit 66, p. 14.) Further proof that PG&E viewed PSEP costs as a relevant issue is demonstrated by Mr. Fornell's statement that it was his belief that the concept of a financial "penalty" should include both fines and all other San Bruno-related shareholders costs:

> "While Overland focused on what it termed a "fine," the investment community more generally refers to a "penalty." To investors, the term "penalty" includes all the costs that PCG's shareholders will have to bear as a result of the San Bruno accident -- whether they are unrecovered pipeline expenditures or a fine that may be paid to the State Treasury. What the investment community is interested in is the financial impact of the accident on the Company rather than the label applied to the cost. Consistent with this perspective, we use the term "penalty" throughout this report." (Joint Exhibit 66, p. 2.)

In yet another example that PG&E was aware that PSEP costs would be an issue, PG&E actually amended the testimony of Jane Yura on January 14, 2013, to include a chart showing PSEP-related shareholder expenses. (See Appendix C of Hearing Exhibit PGE-1A.)

All of these examples demonstrate that PG&E was objectively on notice that PSEP costs would be an issue in this proceeding. No reasonable person could read the OII, the CPSD Staff Report, and Overland's report, and conclude otherwise. Moreover, the fact that Mr. Fornell's and Ms. Yura's testimony discussed the issue shows that PG&E was subjectively aware that PSEP costs are an issue in this proceeding.

For PG&E to now claim that it did not know until Overland's rebuttal testimony on February 8, 2013, that PSEP and "other" costs would be an issue, is simply not supported by the record. Practically every document in this proceeding lists PG&E's PSEP costs as an issue in this proceeding.

However, even assuming that it were true (which CPSD does not) that PG&E did not know PSEP and "other" costs would be an issue, PG&E provides no persuasive explanation why it waited from February 8 until now, July 18, ***over 5 months later***, to bring a motion to reopen the record.[5]

PG&E's primary stated reason for the timing of this motion is that it did not realize until Overland's rebuttal testimony that PSEP and "other" costs would be an issue in this case. However, no reasonable person could read the OII, the CPSD Staff Report, and the Overland Financial Analysis, and come to that conclusion. But even assuming for arguments sake that PG&E made such a colossal mistake (as opposed to a deliberate choice), there is simply no excuse for waiting an additional 5 months to bring this motion once they were aware.

Instead, PG&E's sole justification for waiting 5 more months must be CPSD's amended penalty recommendation, and not Overland's rebuttal testimony at all. As discussed more thoroughly herein, CPSD's amended penalty recommendation justifies, at most, an additional responsive brief from PG&E, which CPSD has acknowledged.

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[5] PG&E claims that it did not seek to reopen the record in February because "detailed information" about shareholder expenses were "not essential to analyzing CPSD's original penalty proposal." (PG&E Motion, p. 10.) However, PG&E did not know of CPSD's penalty proposal until May 6, 2013. PG&E admits that it first learned that Overland's analysis was not solely focused on fines on February 8, 2013. (CPSD disputes this.) PG&E provides no explanation why, if it learned on February 8 that PSEP costs would be an issue, it did not take action prior to May 6, ***three months later***. Furthermore, PG&E admits that CPSD's original proposal on May 6 included "credit" for "gas safety-related costs" (PG&E Motion, p. 10), but provides no explanation why it waited until July 18 to introduce "detailed information" about those "gas safety-related costs", ***over two months later***. What appears likely is that PG&E always assumed it would be able to claim credit for unproven, unaudited, speculative, future costs that are not in the record or within the scope of these OIIs, which is an unreasonable assumption.

III. PG&E's MOTION TO REOPEN THE RECORD ATTEMPTS TO INTRODUCE COSTS THAT ARE BEYOND THE SCOPE OF THESE PROCEEDINGS

For the second time late in these proceedings, PG&E attempts to introduce "unrecovered and unrecoverable costs" such as distribution costs, encroachment costs, shareholder costs above the settlement amount in PG&E's Gas Accord V, and forecasted costs in Gas Accord V. (Mot. to Reopen at p. 5.) None of the three San Bruno OIIs addressed distribution costs. The investigations were strictly limited to PG&E's transmission system. The NTSB Recommendations and Commission Orders in 2010 and 2011 were limited to PG&E's transmission system. Further, the pending PG&E GRC, A.12-11-009, will consider PG&E's gas distribution costs and rates.

These shareholder costs were raised again in PG&E's CRB at page 12 in section II, ALL UNRECOVERED PIPELINE SAFETY COSTS SHOULD BE APPLIED TO ANY PENALTY, and Appendix A to the CRB. CPSD moved to strike these costs as not part of the proceedings' record (CPSD Motion to Strike at p. 4) and beyond the scope of the proceedings (*id.* at pp. 4-5.) CPSD previously noted that "encroachment issues were raised recently and are specifically outside the scope of this Class Location proceeding." (See CPSD's OB in I.11-11-009 at p. 8.) This first attempt to raise shareholder costs into the record was denied in Administrative Law Judge Wetzell's Ruling Granting Motion to Strike in an e-mail ruling dated June 3, 2013.

Nevertheless, PG&E asks a second time to allow the introduction of these shareholder costs (PG&E Mot. to Reopen at p. 5), claiming it "did not previously seek to introduce detailed evidence regarding actual and forecast PSEP costs and other categories of unrecovered and unrecoverable costs because it was not relevant to Overland's original report and it was not essential to assessing CPSD's original penalty proposal." (*Id.* at 9.) (The Overland Report has been discussed previously.) PG&E's grounds for reopening the record now do not meet the requirements of Commission Rule 13.14.

Finally, Commission proceedings in which hearings are ordered are required to have the assigned commissioner or the assigned administrative law judge hear the case in

the manner described by the scoping memo. (Pub. Util. Code § 1701.2(a).) None of the scoping memos in the three San Bruno OIIs address costs which PG&E seeks to incorporate in its Motion. (Mot. to Reopen at p. 5.) The three investigations into the San Bruno explosion, I.12-01-007, into Recordkeeping (I.11-02-016) and into Class Locations (I.11-11-009), all have scoping memos or Scoping Rulings that are limited to PG&E's natural gas transmission pipeline system. Additionally, none of the three OIIs concern protection of rights-of-way costs (i.e., encroachment). CPSD'S OB in the Class Location OII (I.11-11-009) specifically noted that encroachment costs are beyond the scope of the proceeding.[6] Introducing and relying on matters beyond the scope of the issues identified in the Scoping Memo violates Commission rules and Pub. Util Code § 1757.1(a)(2), for failure to proceed in a manner required by law if sufficient due process is not provided. It also establishes grounds for a court to overturn a decision based on matters not identified in the scoping memo. (*Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, 1106.)

IV. PG&E'S MOTION TO REOPEN WOULD UNDULY DELAY THESE HEARINGS

PG&E claims that it should be given 14 days from the date of the ALJ's ruling to submit additional evidence, and then recommends that CPSD and other parties should only be allowed 21 days to submit any additional evidence. (PG&E Motion to Reopen, p. 12.) However, as shown below, PG&E's recommendation undermines CPSD's and intervenors' broad legal rights to discover and cross-examine PG&E's witnesses who sponsor PG&E's allegedly new evidence.

PG&E's 21 Day Proposal would unlawfully curtail CPSD staff's broad discovery authority, which is codified in numerous sections of the California Public Utilities Code, and specifically recognized by the Commission in each of the three investigations and Resolution L-403. For example, in Resolution L-403 the Commission stated:

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[6] "These encroachment issues were raised recently and are specifically outside the scope of this Class Location proceeding." (See: CPSD's OB in I.11-11-009 at p. 8. See: http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=31734898)

> "Even without the compulsion of a subpoena, the Commission hereby confirms that under Public Utilities Code §§ 313, 314, 314.5, 315, 581, 582, 584, 701, 702, 771, 1794, and 1795 the Commission staff may obtain information from a public utility like PG&E, and that staff is already deemed to have the general investigatory authority of the Commission." Commission Resolution L-403, p. 6.

Similar language is found in each of the OIIs. *See, e.g.,* Order Instituting Investigation, I.11-11-009, 2011 Cal. PUC LEXIS 506, at *23-4 and 39-40.

Moreover, in light of PG&E's recent refusal to answer CPSD staff's data request during the course of the San Bruno investigations,[7] CPSD has doubts about whether PG&E would now answer CPSD's and intervenors' data requests to enable the production of evidence within PG&E's proposed 21-day period. This is especially true considering that California Public Utilities Code §§ 314 and 581 do not limit the time frame in which CPSD may request the utility to respond to CPSD's data requests. Nevertheless, PG&E refused to answer CPSD's previous data requests.

Finally, PG&E broadly claims, "The Commission regularly reopens the evidentiary record when the situation warrants it." PG&E Motion to Reopen, p. 3. However, in each of the three cases that PG&E cited as precedent for this notion, the Commission made as a prerequisite to reopening the record that there also had to be an evidentiary hearing. *Application of S. Cal. Gas Co.*, D.09-01-009, 2009 Cal. PUC LEXIS 39, at *17-18, as amended by D.10-09-001, 2010 Cal. PUC LEXIS 322 at * 3-4; *Application of S. Cal. Water Co.*, D.93-06-035, 1993 Cal. PUC LEXIS 475, at *48-9; *Order Instituting Rulemaking*, D.04-07-036, 2004 Cal. PUC LEXIS 337, at *12. Moreover, PG&E's motion omits another Commission decision, in which the Commission agreed with PG&E's argument *against* reopening the record. Quoting PG&E, the Commission found, "(the) Motion would deprive the parties, and the record itself, of the procedural process of testimony, discovery, responding testimony and cross-examination that are integral to the development of an evidentiary record." *Application*

[7] See Declaration of Darryl J. Gruen, p. 2, and Appendices 1-2.

of Pac. Gas and Electric Co., D.11-11-008, 201 Cal. PUC LEXIS 516 at *79. PG&E's proposal to allow CPSD staff 21 days to add more evidence simply ignores the requirements for accompanying additional hearings and procedural requirements.

Rule 13.14(b) of the Commission's Rules of Practice and Procedure contemplates that the record should be reopened where "material changes of fact or of law" have occurred. However, as CPSD has stated and explained earlier in this response, only CPSD's legally corrected position is new, it is not based upon any new facts or new laws. In short, PG&E does not raise a valid reason to reopen hearings and justify undue delay.

V. CONCLUSION

For the above-mentioned reasons, CPSD respectfully submits that the ALJs should reject PG&E's Motion to Reopen, and reinstate the briefing schedule.

Respectfully submitted,

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