

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 TO THE MOTION OF THE CITY OF SAN BRUNO TO
STRIKE THE CREDITS AGAINST PENALTIES PROVISIONS**

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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), the Consumer Protection and Safety Division (CPSD)¹ hereby submits its response to the motion of the City of San Bruno to strike the credit against penalties provisions (San Bruno MTS) in CPSD's previously filed opening brief (CPSD OB) and reply brief (CPSD RB) in the fines and remedies phase of these proceedings.

Earlier today, CPSD filed its Amended Reply Brief, which changed and clarified provisions in both of CPSD's briefs herein. CPSD submits that in light of CPSD's filing of its Amended Reply Brief, the San Bruno MTS should be deemed moot.

II. The CPSD "Crediting Mechanisms" in CPSD's Amended Reply Brief Do Not Exist

The language, with San Bruno referenced in the San Bruno MTS, has, for the most part, been removed from the CPSD's Amended Reply Brief (CPSD's ARB). Instead, it has been replaced with straightforward analysis, references to the record evidence, and citations to Commission precedent.

In the CPSD's Amended Reply Brief, for the first time, CPSD has taken the position that the Commission should impose, at a minimum, a \$300 million fine on Pacific Gas and Electric Company (PG&E) for all of its violations in these proceedings. While the \$300 million amount is not "in the record," it is based upon how much more catastrophic the San Bruno explosion was to the City of San Bruno compared to the explosion in Rancho Cordova, which the Commission had found warranted a \$38 million fine.² Moreover, CPSD did not confine payments required by PG&E to this \$300 million fine, because the violations in these orders instituting investigation (OII's)

¹ 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.

² See CPSD's ARB, p.7.

warranted a much larger amount. However, if PG&E went bankrupt or lost its creditworthiness, it would not be able to enhance the safety of its pipeline system, let alone buy power or natural gas for its customers.

Consequently, CPSD's Amended Reply Brief at p.3 relies upon the Overland Consulting report and testimony, which is Joint Ex. 51 in the record in the Fines and Remedies Phase, as supporting \$2.25 billion as the maximum amount that PG&E can be required to pay without hurting its creditworthiness. In addition, CPSD has referred to Joint Ex. 53, p. 22, which is also in the record, to support its contention that PG&E has already collected \$200 million as part of its 2012 issuance of equity capital, which PG&E has set aside in a reserve to pay for a \$200 million fine.

CPSD also referred to the Commission's Decision (D.) 12-12-030 (Tables E-2 and E-3) as showing the difference between the amount PG&E had sought for approval in its Pipeline Safety Enhancement Plan (PSEP) and the amount, which the Commission authorized PG&E to collect from its ratepayers, subject to refund. This resulted in a theoretical disallowance of \$1.015 billion. However, because \$380.5 million was for "contingencies" for hypothetical cost overruns (*see* D. 12-12-030, p. 98), which the Commission did not accept, the \$380.5 million had to be subtracted from the \$1.015 billion. This resulted in a disallowance of \$634.5 million. This disallowed amount included the \$200 million, which CPSD's Joint Ex. 53, p.22, had indicated PG&E had already collected and placed in a reserve. Therefore, the amount of equity capital, which PG&E still needed to issue to recover its disallowed PSEP costs, was approximately \$435 million. *See* CPSD's ARB, p.4.

While all of these mathematical computations may not be in the record, they involve basic math. In addition, the Commission's disallowed amounts are not part of a "credit mechanism." They involve dollars which PG&E still must raise through the equity capital market as part of the same \$2.25 billion which the Overland Consulting group claimed was the necessary limit to which the Commission could disallow amounts or impose fines on PG&E for its violations in the OIIs without affecting PG&E's creditworthiness. Therefore, CPSD has demonstrated that, when subtracting the \$435

million from the \$2.25 billion, and then subtracting the \$300 million for the minimum fine, the remaining amount of \$1.515 billion is available to pay for the ratepayer's share of PSEP Phase I costs with any remaining amounts available to help pay the ratepayers' share of PSEP Phase II costs.³

All of the other credit mechanisms, which San Bruno maintains were in the CPSD's Reply Brief, were omitted CPSD's ARB, which explicitly provides that it supersedes the other sections of CPSD's previous Reply Brief except for the 2-page Remedies portion and its Appendix A and Appendix B, which were remedies prepared by CPSD's expert witnesses. Except for the most costly remedy involving PG&E's Pipeline Records Integration Program, which the Commission had already disallowed in D.12-12-030, p.87, so CPSD does not recommend ratepayers should pay , these other proposed remedies were for relatively low amounts.

III. CONCLUSION

For the above-mentioned reasons, CPSD respectfully submits that the ALJs should reject Sa Bruno' MTS.

Respectfully submitted,

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³ See CPSD's AVI