

**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 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)

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)

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO
"MOTION OF THE CONSUMER PROTECTION AND SAFETY
DIVISION FOR PROCEDURAL RULINGS TO GOVERN THESE
PROCEEDINGS"**

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CPSD characterizes its motion to withdraw and replace everything in its reply brief on penalties except Section III as “procedural,”² but it is anything but procedural.³ CPSD’s motion,

¹ CPSD asked the ALJs to shorten the time to respond to one portion of its motion – that requesting leave to file a new reply brief on penalties. Motion at 1. By email ruling on July 9th, ALJs Wetzell and Yip - Kikugawa granted that request and ordered that responses be filed by the end of today. PG&E will respond to the second part of CPSD’s motion in the normal time, on or before July 23rd.

² Motion at title page, 1, 2 & 3.

³ 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.

if granted, effectively would reopen the final phase of these three OIIs, delaying their resolution by months. CPSD first made the policy recommendation that its proposed penalty be comprised of post -accident PG&E shareholder -funded gas safety improvements in its May 6, 2013 Remedies Opening Brief.⁴ The reply brief that CPSD now seeks to withdraw consistently maintained that position, reiterating that “[a]ny bona fide safety enhancement to PG&E’s gas transmission or distribution system made at shareholder expense may be eligible to satisfy the \$2.25 billion penalty.”⁵

CPSD’s motion fails to provide good cause for its extraordinary request to reopen the briefing at this late juncture. The evidentiary hearings concluded four months ago, briefing ended a month ago, and the three proceedings stood submitted at that time. CPSD points to no new facts to support its request to withdraw and replace its reply brief on penalties. CPSD recounts the history of who signed which CPSD brief and CPSD attorney staffing, but never explains how those so -called “unorthodox events”⁶ could justify CPSD being allowed to withdraw its reply brief on penalties and file a new one. CPSD also does not contend that the law has changed in the month since it filed its reply brief.⁷ Instead, it asserts that it “needs to correct certain inaccuracies in statements in its briefs”⁸ – without identifying those “inaccuracies” or explaining why they could not have been corrected by simple errata. CPSD’s motion appears to be an effort to revisit its entire penalty recommendation, as it states that its amended reply brief “would have implications for CPSD’s positions in its Opening Brief.”⁹ CPSD’s request to withdraw and replace all of its reply brief save one section demonstrates that it intends to go well beyond correcting “inaccuracies” by making wholesale revisions to its proposal.

⁴ CPSD Remedies Opening Brief (OB) at 6, 70.

⁵ CPSD Remedies Reply Brief (RB) at 3-4.

⁶ Motion at 2.

⁷ CPSD’s motion is analogous to a motion to set aside submission and reopen the record, covered by Rule 13.14 of the Commission’s Rules of Practice and Procedure. Under that rule, such a motion “shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or 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.”

⁸ Motion at 2. In the quoted statement, CPSD refers to “briefs,” not just its reply brief. Ironically, although it claims it needs to correct “inaccuracies” in its briefs, CPSD’s motion inaccurately states that CPSD and PG&E stipulated to the facts in the Class Location OII (I.11-11-009). Motion at 1. There was no such stipulation.

⁹ Motion at 3.

CPSD's further assertion that its amended reply brief "may moot at least some of the issues raised in the City of San Bruno's motion to strike"¹⁰ reinforces the notion that if CPSD's motion is granted, CPSD may offer an entirely new penalty proposal.¹¹ San Bruno's motion seeks to strike portions of both CPSD's opening and reply briefs on penalties on the grounds that the policy recommendation that the costs PG&E's shareholders have incurred or will incur to improve PG&E's gas system should be part of the penalty determination is "unsupported by evidence in the record."¹² CPSD cannot make San Bruno's motion "moot" by correcting any "inaccuracies" in CPSD's reply brief. First, as San Bruno's motion recognizes, CPSD's policy position is unswerving in its opening and reply briefs. Second, the policy espoused by CPSD in both of its briefs is not an "inaccuracy." Rather, it is consistent with the testimony of Mr. Lubow and Professor Malko of Overland Consulting ("Overland"), the CPSD consultants who testified at the evidentiary hearing.¹³ Overland agreed for these purposes that a penalty would include costs that "shareholders are responsible for either because it is a fine that is paid to the State General Fund, it is costs that are being incurred for Commission -approved activities but not allowed into rates, like some of the pipeline safety enhancement plan costs, or other costs that the company has incurred and is continuing to incur that are above and beyond whatever is in rates."¹⁴

CPSD's motion is unprecedented and unjustified, and granting it would require starting the penalty briefing process anew, delaying the resolution of these proceedings by months even as the third anniversary of the tragic San Bruno accident approaches. Further delay in resolving these proceedings does not serve the public interest. Yet, if CPSD is permitted to file an amended brief, due process requires that PG&E be provided a fair opportunity to respond. PG&E's May 24, 2013 Coordinated Remedies Brief principally addressed the remedy and penalty proposals of CPSD – the prosecutor in these proceedings – as set forth in CPSD's brief at

¹⁰ Motion at 3.

¹¹ San Bruno's press release trumpets that the "CPUC's safety division on Monday July 8 asked to withdraw a controversial penalty recommendation." San Bruno's July 9, 2013 press release was apparently sent to everyone on the service list in each of the three OIIs.

¹² San Bruno Motion at 2.

¹³ Ex. Joint-53 at 22, 27 (CPSD/Overland); Joint R.T. 1367, 1369 -71 (CPSD/Overland). As Overland explained, its analysis focused on determining the total amount of "nonrevenue producing" costs PG&E could incur without undue financial harm. Joint R.T. 1367 (CPSD/Overland).

¹⁴ Joint R.T. 1370-71 (CPSD/Overland).

the time. If CPSD is permitted to change its position after the cases have been submitted for decision, due process requires that PG&E be given a full opportunity to respond. That means that PG&E's response cannot be required in a mere seven days or limited to 10 pages or to particular topics, as CPSD requests. If CPSD is given a "do-over," PG&E must similarly be allowed to respond however it deems appropriate given whatever position CPSD takes in its new reply brief.¹⁵

In sum, CPSD has failed to show good cause to withdraw its reply brief on penalties and file a new one. CPSD has already filed two briefs in support of its penalty proposal and the ALJs should not now authorize CPSD to reopen the briefing on those issues. Reopening the briefing will only delay these proceedings to the detriment of the public interest in reaching a resolution. If CPSD is allowed to file a new brief, however, PG&E must be allowed to respond without the constraints CPSD seeks to impose.

Respectfully submitted,

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¹⁵ The fact that CPSD claims it can state its new position in 10 pages says nothing about how many pages or how much time PG&E would reasonably need to respond.