

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)

**JOINT MOTION OF THE DIVISION OF RATEPAYER ADVOCATES
AND THE UTILITY REFORM NETWORK TO STRIKE ALL NON-RESPONSIVE
INFORMATION CONTAINED IN PACIFIC GAS AND ELECTRIC COMPANY'S
RESPONSE TO SECTION 4 OF ADMINISTRATIVE LAW JUDGES' JULY 30, 2013
RULING REQUESTING ADDITIONAL COMMENT AND TO SHORTEN TIME
FOR RESPONSES**

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Office of Ratepayer Advocates (“ORA”)¹ and The Utility Reform Network (“TURN”) (collectively “Joint Parties”) hereby move to strike all non-responsive information contained in “Pacific Gas and Electric Company’s Responses to Questions in Section 4 of the Administrative Law Judges’ July 30, 2013 Ruling Requesting Additional Comments” filed by Pacific Gas and Electric Company (“PG&E”) in these proceedings on September 20, 2013 (“PG&E’s § 4 Comments”).

PG&E filed its § 4 Comments in response to an Administrative Law Judges’ Ruling issued July 30, 2013 requesting additional comment in these proceedings on various issues (“July 30 Ruling”). Section 4 of the July 30 Ruling called for “Additional Briefing” on nine specific and detailed questions that clearly sought to supplement information and argument provided in the prior rounds of briefs on the “fines and remedies” issues. The July 30 Ruling stated: “Parties are asked to respond to the following questions, based on PG&E’s comments submitted in response to the questions in Section 3 above.”² At no point did the July 30 Ruling invite parties to address arguments they made, or could have made, in previous briefs.

Nevertheless, PG&E’s § 4 Comments reflect that PG&E took the July 30 Ruling as an invitation to re-brief the entire issue of what fines and other remedies should be imposed as a result of the three San Bruno Investigations. Thus, PG&E’s § 4 Comments include extensive briefing on, among other things, challenges to previous proposals regarding the amount of the total financial consequences that should be imposed (over 5 pages),³ sur-rebuttal arguments against intervenor proposals to prevent shareholders from

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.”

² July 30 Ruling, p. 4.

³ See, e.g., PG&E § 4 Comments, pp. 1-6.

gaining tax benefits from disallowances (over 1 page),⁴ repetition of speculation that parties' proposals would adversely affect PG&E's ability to raise capital,⁵ and challenges to the validity of the analysis in the Overland Report (over 7 pages).⁶

The Joint Parties believe that the July 30 Ruling did *not* intend to allow re-briefing of these issues. This is especially evident given the extended briefing schedule for this fines and remedies phase of the proceedings, which initially ended June 7. On July 12, 2013, given "unorthodox events,"⁷ the briefing schedule was extended by an e-mail ruling to permit CPSD to file an "amended" reply brief, and for parties to file responses. Both CPSD's "amended" reply brief – which made the CPSD proposal more consistent with proposals that had already been briefed⁸ – and parties' responses to the CPSD pleading, were subject to a ten-page limit. All briefing was concluded on August 28, 2013. On August 1, 2013, PG&E's requests to reopen the record for this last round of limited briefing, and eliminate the page limits, were rejected. With regard to the page limit, the August 1 ALJ Ruling explained:

... CPSD's revised penalty recommendation had been raised by intervenors in their opening briefs on fines and remedies. As such, PG&E already had an opportunity to respond to the penalty recommendation – if not the specific amounts – proposed by CPSD.

⁴ See, e.g., PG&E § 4 Comments, pp. 7-8. The July 30 Ruling only asked for parties to comment on a potential *methodology* for adjusting disallowed expenditures to account for tax benefits.

⁵ See, e.g., PG&E § 4 Comments, pp. 10-11.

⁶ See, e.g., PG&E § 4 Comments, pp. 12-19.

⁷ Motion Of The Consumer Protection And Safety Division For Procedural Rulings To Govern These Proceedings, July 8, 2013, p. 2.

⁸ Administrative Law Judges' Ruling Addressing July 18, 2013 Motion of Pacific Gas and Electric Company, August 1, 2013 ("August 1 ALJ Ruling"), p. 4:

PG&E has failed to present a persuasive argument why CPSD's revised penalty recommendation is based on new facts or law. CPSD has simply reached a different set of conclusions based on the *same* facts and law. Moreover, intervenors have already proposed the same type of penalty – a monetary fine to be paid to the State's General Fund and a disallowance of certain expenses and capital expenditures associated with improving PG&E's gas system – in their opening briefs. As such, PG&E has had an opportunity to respond to these arguments.

In light of the above, we decline to remove the 10-page limit on PG&E’s response.⁹

In this context – recognizing that the briefing had been reopened for a limited purpose, but was otherwise closed to new proposals – it is clear that the July 30 Ruling sought guidance the ALJs felt was necessary to consider the various proposals *already* before them, not to provide parties the opportunity to present new arguments or respond to arguments they had not previously addressed.

Indeed, in this context, it is clear that the scope of the July 30 Ruling was very narrow. Section 4 of the July 30 Ruling lists seven questions asking for proposed “methodologies” to address: (1) “tax benefits”;¹⁰ (2) “the timing of expenses and tax benefits”;¹¹ (3) adjustments for equity issued for capital expenditures not related to disallowances;¹² (4) adjustments for “other factors”;¹³ (5) the additional amount of equity PG&E could issue if it were issued over a period of years;¹⁴ (6) tax benefits that PG&E will accrue from disallowed expenditures;¹⁵ and (7) specifics regarding how any of these methodologies could be applied in this proceeding given the timing of various expenses and impacts. The July 30 Ruling uses the word “methodology” more than ten times in § 4, and in every one of the first seven questions. At the end of the list of questions, the July 30 Ruling reiterates the need for “methodologies” by advising: “[i]n addressing the above questions about methodologies, parties should focus on the nature of the calculations that would need to be made, and not on specific numbers.”¹⁶

⁹ August 1 ALJ Ruling, pp. 4-5.

¹⁰ July 30 Ruling, p. 5, Question 1.

¹¹ July 30 Ruling, p. 5, Question 2.

¹² July 30 Ruling, p. 6, Question 3.

¹³ July 30 Ruling, p. 6, Question 4.

¹⁴ July 30 Ruling, pp. 6-7, Question 5.

¹⁵ July 30 Ruling, p. 6, Question 6.

¹⁶ July 30 Ruling, p. 7.

Notwithstanding this clear request for “methodologies” and “calculations,” it appears that, giving PG&E the benefit of the doubt, fewer than 10 pages of the 28 pages of text in PG&E’s § 4 Comments are responsive to the ALJ questions.

Admittedly, Question 9 asks parties to comment on “how the impact of any fines and disallowances imposed on PG&E should be compared to each other or how they differently affect PG&E’s need for additional capital.” This question needs to be read in the context of the preceding questions and does not constitute an open-ended invitation to re-state previous arguments or to make sur-rebuttal arguments.

PG&E’s § 4 Comments go too far, and they are not harmless. They force the other parties to devote additional time to responding to a re-hash of arguments that have been repackaged in the form of responses to ALJ questions. They force the Commission to wade through extraneous re-argument to seek out relevant answers to the ALJs’ questions. In addition to cluttering its § 4 Comments with pages of non-responsive arguments, PG&E raises *new* arguments for the first time in this pleading, and it continues to seek to introduce the very same *new* evidence that it has repeatedly been ordered to remove from other pleadings.

PG&E’s § 4 Comments contain a number of new arguments.¹⁷ For example, for the first time, PG&E opposes proposals made months ago that ratepayers should receive the tax benefits that flow from disallowed capital expenditures.¹⁸ Other new arguments are focused on undermining the Overland Report.¹⁹ All of these arguments and objections should have been raised in rebuttal to the Opening Briefs filed May 6, 2013. Responding to tax benefit proposals and attempting to counter the Overland Report at this

¹⁷ The examples of new argument provided here are not exhaustive. To the extent PG&E’s § 4 Comments contain arguments that are not new, they are non-responsive to the July 30 ALJ Ruling. For example, Where PG&E’s Introduction does not raise new issues, it is non-responsive to the July 30 Ruling and should be struck in its entirety for that combination of reasons.

¹⁸ See, e.g., PG&E § 4 Comments, pp. 7-8.

¹⁹ See, e.g., PG&E § 4 Comments, p. 12-19.

late juncture is improper sur-rebuttal.²⁰ As the August 1 ALJ Ruling recognized: “PG&E has had an opportunity to respond to these arguments.”²¹

Further, it is clear that PG&E has no right to introduce new evidence in its § 4 pleading. The August 1 ALJ Ruling expressly denied PG&E’s request to reopen the evidentiary record. Further, an e-mail ALJ Ruling on June 3, 2013 granted CPSD’s Motion to Strike from PG&E’s Coordinated Remedies Brief *virtually the same information* PG&E now includes at pages 13-14 of its § 4 Comments.²²

To compound the situation – in response to a TURN motion – the ALJs in this proceeding issued an e-mail ruling on August 13, 2013, clarifying that parties responding to the July 30 Ruling “may not introduce new evidence that would circumvent the August 1, 2013 ruling Denying PG&E’s motion to reopen the record.” Notwithstanding this clear mandate, PG&E included new evidence in its § 3 Filing on August 21, 2013.²³ Therefore, pursuant to another joint TURN/ORR motion to strike, the ALJs issued a ruling on September 16, 2013 ordering PG&E to strike the new evidence from its pleading.²⁴ PG&E has now not only included “new” evidence into its § 4 Comments, but it is virtually the *same* evidence it was ordered to strike from its May 24 Coordinated Remedies Brief.

In repeatedly and intentionally disregarding *multiple* ALJ rulings, PG&E violates Rule 1.1 and harms the regulatory process.²⁵

²⁰ See also, footnotes 59, 60, and 61 at pp. 20-21 wherein PG&E seeks to rebut TURN’s last brief filed in this proceeding. This additional briefing on parties’ final reply briefs also contravenes the page limit set for those briefs.

²¹ August 1 ALJ Ruling, p. 4.

²² The June 3, 2013 e-mail ruling of ALJs Yip-Kikugawa and Wetzell granted the CPSD motion to strike portions of PG&E’s “Coordinated Remedies Brief.”

²³ See, e.g., PG&E § 4 Comments, pp.13-14.

²⁴ Administrative Law Judges’ Ruling On Joint Motion Of The Division Of Ratepayer Advocates And The Utility Reform Network To Strike Portions Of Pacific Gas And Electric Company’s August 21, 2013 Response, September 16, 2013.

²⁵ See, e.g., *Sprint PCS*, D. D.01-08-019 for examples of harm to the regulatory process sanctionable under Rule 1.1.

For all of these reasons, at a minimum, PG&E should be ordered to strike all of the non-responsive text in its § 4 Comments, including all new evidence and new arguments contained in that pleading as follows:

1. All text and accompanying footnotes in the introduction starting on page 1 under the heading “Pacific Gas And Electric Company’s Responses To Questions In Section 4 Of Administrative Law Judges’ July 30, 2013 Ruling Requesting Additional Comment” until the top of page 7 that starts “Section 4, Question 1.”
2. All text and accompanying footnotes starting with the text on page 7 that reads “a. PG&E strongly opposes the use” until the last paragraph on page 8 that starts “As explained in response to Section 3, Question 2”.
3. All text and accompanying footnotes starting with the last paragraph on page 10 that reads: “a. This question appears to be based” until the text on page 11 in the middle of the first full paragraph that reads “whether the expenditure is made in the future ...”
4. All text and accompanying footnotes on pages 12 through 19 until the last paragraph on page 19 that starts “Any Methodology to Set Fines and Penalties Must Take Into Account the Costs That Shareholders Are Already Bearing.”
5. All text and accompanying footnotes for the first and second full paragraphs on page 20.
6. All of the text in footnote 61 on page 21

Finally, the Joint Parties request that the time to provide responses to this Joint Motion should be shortened to Monday, October 7 and that the date for filing responses to the § 4 Comments be extended from Monday, October 7, to Friday, October 11.

The Joint Parties sincerely regret that they were unable to file this Joint Motion at an earlier time that would not intrude on the comment schedule for this round of pleadings. Unfortunately, the intervening and abbreviated schedule for the pipeline safety-related Order to Show Cause proceedings in R.11-02-019 impeded our ability to prepare this Motion any sooner than today.

Respectfully submitted,

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