

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Adopt New
Safety and Reliability Regulations for
Natural Gas Transmission and Distribution
Pipelines and Related Ratemaking
Mechanisms

Rulemaking 11-02-019
(Filed February 24, 2011)

**THE CITY OF SAN BRUNO AND CITY OF SAN CARLOS'
RESPONSE TO PACIFIC GAS & ELECTRIC COMPANY'S
APPLICATION FOR REHEARING OF DECISION NO. 13-12-053**

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I. INTRODUCTION

The City of San Bruno (San Bruno) and the City of San Carlos (San Carlos) respond and object to Pacific Gas & Electric Company's (PG&E) application for rehearing of Decision No. 13-12-053 (Decision). PG&E's application does not comply with Public Utilities Code and the Rules of Practice and Procedure because it does not cite to legal error as a justification for rehearing. Instead, PG&E simply restates old arguments and takes issue with the facts. In accordance with Rule 16.1(d) of the Rules of Practice and Procedure, San Bruno and San Carlos timely submits this response to PG&E's application and requests the Commission deny PG&E's request for a rehearing.

II. DISCUSSION

PG&E argues a rehearing is warranted because: 1) the Decision concludes PG&E violated Rule 1.1 without a finding of proof that PG&E intended to mislead the Commission; 2) PG&E's "errata" filing was a one-time event which does not constitute

“continuing violations;” and 3) the Decision violates PG&E’s constitutional rights under the due process and excessive fines clauses.¹

A. PG&E’s Application Does Not Cite to “Legal Error” to Justify a Rehearing.

California Public Utilities Code section 1732 specifies that an “application for rehearing shall set forth specifically the ground or grounds on which the applicant considered the decision or order unlawful.” (emphasis added). Further, the Public Utility Commission’s Rules of Practice and Procedure explain: “[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”²

PG&E’s arguments dispute the Decision’s findings of fact, not its legal conclusions. PG&E’s application argues the Decision offers no finding of proof that PG&E intended to mislead the Commission to warrant a Rule 1.1 violation. They further argue PG&E’s “errata” filing was a one-time event which does not constitute a “continuing violation.”

The heart of both arguments disputes the Commission’s factual determinations regarding when PG&E top management knew or should have known of the records violation but failed to alert the Commission. It was this failure that prompted the Commission to find continuing Rule 1.1 violations. Evidence proffered at the Order to Show Cause (OSC) hearings revealed that a widespread, internal PG&E email was circulated on November 14, 2012 lowering Line 147's Maximum Allowable Operation Pressure due to the discovered records error. Additionally, PG&E's Vice President of Gas Transmission Maintenance & Construction testified he knew of the errors by late

¹ See p. 2 of PG&E’s Application for Rehearing.

² Rule 16.1(c) of the PUC Rules of Practice and Procedure (emphasis added).

October or early November and believed it was "highly likely" he discussed his findings with upper management.³

Based on these facts, the Commission determined PG&E's upper management knew by mid-November 2012 of the errors (or should have had internal procedures in place to ascertain the issues), but did not notify the Commission or interested parties until many months later.⁴ This failure resulted in a Rule 1.1 violation continuing from the date of implied notice until the relevant notifying information was finally provided in PG&E's verified statement. These are findings of fact, not law. As an application for rehearing required to provide the Commission with evidence of "legal error," these arguments should be stricken from the record.

PG&E's third argument addresses the constitutionality of the fines. At first glance, it appears PG&E cites to legal error in its reasoning that the Decision violates the California Constitution's due process and excessive fines clauses. But when the arguments are read in detail, it becomes clear PG&E merely disputes findings of fact, not an error of law.⁵ PG&E cites to the evidence presented at the OSC hearing regarding when PG&E's duty to disclose the pipeline errors arose to support its position it did not receive proper notice. PG&E's "excessive fines" argument does not address a misapplication of law, but disputes the Commission's reasoning to justify the maximum

³ D.13-12-053 at p. 11. PG&E could have produced exculpatory evidence through testimony of its senior management, or sought to excuse or mitigate its conduct through such testimony or evidence. Instead, PG&S chose to invoke attorney client privilege. While this asserted privilege is PG&E inalienable right, and only it knows the reasons for doing so, it chose not to disclose information that may have contradicted (to its benefit) the Commission's findings and prevented the severity of sanctions.

⁴ D.13-12.053 at pp. 12, 22, 26.

⁵ See pp. 9-12 of PG&E's Application for Rehearing.

penalties.⁶ Again, these are disputes of fact, not law. These arguments must be stricken from the record.

B. PG&E is Simply Rehashing Old Arguments.

PG&E's application sounds like a broken record. The legal authority cited in its application have been cited many times over. The Commission was well aware of these arguments when it issued its Decision. Not only had PG&E reiterated these arguments time and time again in its briefs, the Decision specifically addresses – and dismisses – these arguments in its findings.

PG&E first argues the Decision does not support its finding of proof that PG&E acted with *mens rea* to mislead the Commission to justify a Rule 1.1 violation. This was already argued in four of PG&E's briefs.⁷ The Commission specifically disregarded this argument in its Decision.⁸

Next, PG&E's application discusses its attempted “errata” filing as a one-time event which does not constitute “continuing violations” as concluded by the Commission. This was already discussed in PG&E's prior briefs.⁹ The Commission addressed this

⁶ “[The fines] were imposed for reporting and filing errors that posed no actual risk to public safety and caused no actual harm – and indeed were not shown to have actually misled the Commission or have had any practical effect whatsoever.” *Id.* at p. 12. In other words, PG&E disagrees with the Commission's conclusion that PG&E's acts and omissions were so severe, and did pose an actual risk, they justify a steep fine. This is not a misapplication of law, this is a dispute of factual interpretation. PG&E says: “hey, it's no big deal” and the Commission responds: “yes, it is.”

⁷ See pp. 3-8 of PG&E's Comments in Response to OSC, filed September 26, 2013; pp. 6-7 of PG&E's Reply Comments in Response to OSC, filed October 1, 2013; pp. 9-10 of PG&E's Comments on Proposed Decision, filed November 19, 2013; pp. 3-7 of PG&E's Comments on Alternative Proposed Decision, filed November 25, 2013.

⁸ D.13-12-053 at pp. 20-21. Why PG&E persists with its *no mens rea* argument is perplexing. The Decision makes it clear that Rule 1.1 does not require intent and the Decision is not based on a finding that PG&E intended to mislead the Commission. Instead, the Commission concludes PG&E violated Rule 1.1 when it failed to promptly correct the erroneous information which was at the foundation of the Commission's prior decision lifting the operating pressure restrictions, i.e., D.11-12-048.

⁹ See pp. 11-13 of PG&E's Comments on Proposed Decision, filed November 19, 2013; pp. 12-13 of PG&E's Comments on Alternative Proposed Decision, filed November 25, 2013.

argument in its Decision and fully explained its rationale that PG&E's inaction supports issuing a penalty for each day PG&E failed to notify the Commission and interested parties of its errors.¹⁰

Lastly, PG&E argues the Decision is unconstitutional because it violates its rights under the due process and excessive fines clauses. PG&E has already argued repeatedly to this Commission that it believes its due process rights have been violated because it did not receive proper notice of the allegations of misconduct against it.¹¹ The Decision specifically dismissed this argument and cites to the record's ample evidence of sufficient notice provided to PG&E concerning the scope of the OSC proceedings.¹² The Commission has also already contemplated PG&E's arguments that the Decision's penalties are unconstitutionally excessive.¹³ In the Decision's calculation of fines, the Commission stresses the fines are within its authority pursuant to the Public Utilities Code and thus constitutional.¹⁴

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¹⁰ D.13-12-053 at pp. 14-15; 21-22.

¹¹ See pp. 4-6 of PG&E's Reply Comments in response to OSC, filed October 1, 2013; pp. 2-7 of PG&E's Comments on Proposed Decision, filed November 19, 2013; pp. 1-3 of PG&E's Comments on Alternative Proposed Decision, filed November 25, 2013.

¹² D.13-12-053 at p. 21.

¹³ See pp. 13-14 of PG&E's Comments on Alternative Proposed Decision, filed November 25, 2013.

¹⁴ D.13-12-053 at pp. 18-19.

III. CONCLUSION

For the foregoing reasons, San Bruno and San Carlos recommend the Commission deny PG&E's application for rehearing. The application does not present any showing of legal error for the Commission to reconsider; it simply rehashes old arguments already disregarded in Decision No. 13-12-053.

Respectfully submitted,

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