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 THE CALIFORNIANS FOR RENEWABLE ENERGY MOTION FOR JUDGMENT ON THE PLEADINGS IN THESE PROCEEDINGS

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August 15, 2014

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I. INTRODUCTION

Pursuant to Rule 11.1(e) and Rule 13.14(b) 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 in opposition to the Californians for Renewable Energy (CARE) Motion for Judgment on the Pleadings in These Proceedings (dated August 5, 2014) ("CARE's Post-Submission Motion.") CPSD's response is essentially based upon two arguments: the impropriety and non-compliance with the Commission Rules for CARE, at this late date, to file CARE's Post-Submission Motion, and the lack of any merit to CARE's Post-Submission Motion.

After the Administrative Law Judges (ALJs) issued their Ruling Notifying Parties of Submission and Issuance of the Presiding Officers' Decisions (PODs) on July 31, 2014 ("ALJs' Submission Ruling"), CARE should not be filing any pleading prior to the issuance of the PODs, unless it meets the requirements of Rule 13.14(b). Among other things, Rule 13.14(b) requires that CARE submit new facts or new law that it did not possess at the conclusion of the hearing, but CARE's Post-Submission Motion failed to cite any new facts or law.

To the extent that the ALJs nevertheless allow CARE to file its Motion for Judgment on the Pleadings, then principles of fairness dictate that the ALJs also consider CPSD's arguments as to why CARE's Post-Submission Motion lacks merit. CARE moves that the Commission enter a judgment in favor of CARE's position, because "no party has opposed the pleadings submitted by CARE." CARE's Post-Submission Motion is based upon frivolous arguments and is not based upon factual evidence in the record.

[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.

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II. CARE'S MOTION FOR JUDGMENT ON THE PLEADINGS IS PROCEDURALLY IMPROPER AFTER THE ADMINISTRATIVE LAW JUDGES HAVE ISSUED THEIR ORDERS STATING THAT THE CASES HAVE BEEN SUBMITTED

After the ALJs issued the ALJs' Submission Ruling pursuant to Rule 13.14(a), CARE submitted a motion for a judgment on the pleadings without any authorization to do so. Under Rule 13.14(b), after a proceeding has been submitted, a party must file a motion to set aside submission and reopen the record for the taking of additional evidence, "and shall specify the facts claimed to constitute grounds in justification thereof, including *material changes of fact or of law alleged to have occurred since the conclusion of the hearing.*" (Emphasis added).

CARE has made no attempt whatsoever to file a motion to set aside the submission, nor has it specified material changes of fact or of law justifying the filing of its motion for a judgment on the pleadings. Indeed, CARE's motion for a judgment on the pleadings merely summarizes its previous allegations in its briefs in the Recordkeeping OII, I.11-02-016, wherein it had not sponsored any evidence whatsoever, let alone has it offered a change of fact or law that it did not have at the conclusion of the hearing.

In Decision (D.) 12-10-019, 2012 Cal. PUC LEXIS 447 at *50-51, the Commission agreed that the ALJ correctly rejected a party's pleading after the matter had been submitted, because the party had not filed a motion to set aside submission of under Rule 13.14(b).

In view of the issuance of the ALJs' Submission Rulings, CARE's subsequently submitted motion should be stricken or rejected, because CARE has not filed a motion to set aside the ALJs' Submission Ruling nor has CARE specified a change of fact or law. In addition, CARE has not shown why it could not have filed its motion for judgment on the pleadings before the matter was submitted, in which case CPSD unquestionably could have filed a response. Under these circumstances, principles of fairness dictate that if the ALJs consider CARE's Post-Submission Motion, the ALJs should also consider CPSD's arguments as to why CARE's Post-Submission Motion lacks merit.

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III. IF THE ALJS DO NOT REJECT CARE'S POST-SUBMISSION MOTION DUE TO THE LATENESS OF THIS FILING, THE ALJS SHOULD REJECT CARE'S MOTION DUE TO ITS LACK OF MERIT

A. Judgments on the Pleadings Are Not Applicable to Post-Hearing Briefs

CARE maintains that because no party opposed CARE's briefs, that it automatically wins the issues and deserves a "Judgment on the Pleadings." CARE's use of Judgments on the Pleadings is inappropriate, because "Pleadings" in the context of "Judgment on the Pleadings" is referring to early pleadings in cases between plaintiffs and defendants, such as complaints, answers or demurrers (*see* Cal. Code Civ. Proced. § 422.10). "Pleadings" do not refer to briefs filed after an evidentiary hearing. Indeed, Commission and judicial precedent have found that Judgments on the Pleadings do not apply when there are many factual disputes. The Commission has denied similar motions because the case presented "too many factual issues to permit a judgment solely on the pleadings." Decision (D.) 04-04-074, 2004 Cal. PUC LEXIS 173 at *7. The courts have similarly held that judgment on the pleadings must be denied where there are material factual issues that require evidentiary resolution. *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865-866.

In essence, CARE's Post-Submission Motion represents a collateral attack on the Commission's issuance of the Order Instituting Investigations (OII) in the Recordkeeping Proceeding and the San Bruno Proceeding, which already determined that hearings were necessary, and which conducted numerous weeks of hearings.

Not surprisingly, CARE has not cited a case supporting its notion that if after an evidentiary hearing, parties do not refer to a intervenor's brief and oppose each of its arguments, then the intervenor automatically wins each of its arguments. In addition, CARE has not cited a case where judgments on the pleadings would be applicable to post-hearing briefs of intervenors in administrative hearings, where tens or hundreds of intervenors may file briefs. If Commission staff were to be required to respond to every

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argument of every intervenor, no matter how frivolous the argument may be, it would impose an impossible burden on staff and prolong every proceeding.

CPSD and other intervenors clearly responded to legal issues, raised by CARE and Pacific Gas and Electric Company (PG&E), such as the legal argument as to why the Commission has authority to find that PG&E has violated section 451 of the California Public Utilities Code. Whether or not CPSD referred to CARE by name, CPSD responded to CARE's argument. However, logically, CPSD focused its briefs on PG&E's arguments, because PG&E is the Respondent and PG&E had sponsored evidence and filed briefs in all three OIIs.

In contrast, CARE, which could be considered a part-time intervenor, participated in only two days of multiple weeks of hearings in only one of the OIIs (i.e, the Recordkeeping OII, I.11-02-016). In fact, CARE had not sponsored any evidence in the Recordkeeping OII. CARE's briefs stated in numerous occasions what its attorney "believes," but that does not make those beliefs evidence. To accept every argument CARE contended in its brief, which was not supported by evidence in the record but which was not explicitly opposed in other parties' briefs, would lead to absurd results. For example, CARE took the position that the Commission's lack of oversight is continuing with the electric smart grid installations and operations. *See* CARE's March 25, 2013 Opening Brief, p. 11 in I.11-02-016 and CARE's August 26, 2013 Rebuttal to the Amended Reply Brief of CPSD, p. 5 in I.12-01-007, I.11-02-016 and I.11-11-009 (not consolidated). Simply because no party opposed CARE on this point does not make its allegation true.

B. CARE's Factual Claim that the CPSD Staff Had Approved PG&E's Installation of Segment 180 of Line 132 in 1956 or 1957 Is Based upon CARE's Misinterpretation of General Order 94-A and Is Not Based upon Record Evidence

The main point of CARE's briefs and its motion for purported Judgment on the Pleadings, pp. 2-5, is based upon CARE's erroneous argument that the Commission's Gas Section had inspected the facilities in question in 1956 or 1957 after they were

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installed and began operations, and determined that the pipeline facilities and their installation met the requirements of the time. As purported support for this proposition, CARE refers to the Commission's Annual Report for FY 1956-1957, p. 53 (even though it is not in the record), which CARE acknowledges discusses staff activities enforcing the Commission's General Order 94-A.

General Order 94-A has been superseded by General Order 94-B, which is on the Commission's website. Assuming for the sake of argument that both versions of General Order 94-A and General Order 94-B are at least citable, it is clear that they only refer to Staff's inspection of gas holder and vessel facilities, which are *storage* facilities. This is clear when reviewing "2. Definition of Terms," which is identical in General Order 94-A and General Order 94-B. Under 2. Definition of Terms, subpart d. defines the term "holder" as a structure "used for the storage" of natural and manufactured gas or hydrocarbon vapors and in subpart f. defines the term "vessel" as a structure "used for the storage" of hydrocarbon liquids. *See also* Commission D. 47085 (April 29, 1952).

Consequently, at best, CARE's argument applies to only Staff inspection of storage facilities. There is no record support whatsoever that the Commission's Gas Section had inspected the underground transmission pipelines installed in San Bruno or any other location in 1956 or 1957 or any other year. Indeed, PG&E did not put evidence in the record that CPSD had such a large staff that such inspections were possible.

In fact, the evidence in the record in I.11-02-016, directly refuted this mere allegation of CARE. During re-direct testimony, Julie Halligan, then CPSD's Deputy Director, testified under oath, that the CPSD's Utility Safety and Reliability Branch (USRB) was a very small staff. Consequently, they had to rely upon audits of a small sample of records, which could lead to field tests. Whether or not her staff found anything wrong did not mean that the records were correct or that the pipelines themselves were free of defects. (Halligan, RT152:5-153:2). Deputy Director Halligan was on the witness stand the first day of the hearing, one of the two days CARE participated. CARE's attorney asked her one question in cross-examination- whether her reports addressed the issues of cost consequences of recommendations, and Ms. Halligan

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stated that her testimony does not address the cost of PG&E's recordkeeping over that time [since 1950]. (Halligan, RT28:6-28:2). After CPSD's counsel asked his questions on re-direct of Deputy Director Halligan, where she discussed the small staff of gas inspectors and, therefore, their reliance on audits of small samples of records, CARE's counsel could have conducted re-cross-examination but chose not to do so. PG&E's counsel chose to conduct re-cross-examine Deputy Director Halligan's testimony concerning a different issue and CPSD's counsel did re-direct on that issue.

The point is that there is no record support for CARE's main position alleged in its Post-Submission Motion. Contrary to CARE's position, the uncontroverted evidence in the record is that Commission Safety staff was too small to review the design, installation and operation of PG&E's pipelines, and, therefore, has to rely upon a small sample of audits.

IV. CONCLUSION

For the foregoing reasons, CPSD respectfully submits that the ALJs should reject CARE's Post-Submission Motion.

Respectfully submitted,

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August 15, 2014

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