



FILED

09-25-12
01:49 PM

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.

Investigation 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.

Investigation 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 High Population Density.

Investigation 11-11-009
(Filed November 10, 2011)

(Not Consolidated)

ADMINISTRATIVE LAW JUDGES' RULING GRANTING MOTIONS OF CONSUMER PROTECTION AND SAFETY DIVISION FOR LEAVE TO SERVE ADDITIONAL PREPARED TESTIMONY AND FOR PERMISSION TO FILE A SINGLE COORDINATED BRIEF REGARDING FINES AND REMEDIES AND NOTICE OF HEARING

1. Summary

On September 7, 2012, the Consumer Protection and Safety Division (CPSD) filed two coordinated motions in Investigation (I.) 12-01-007, I.11-02-016, and I.11-11-009. CPSD requests (1) leave to serve additional prepared testimony regarding Pacific Gas and Electric Company's (PG&E's) financial resources in these proceedings and (2) permission to file a single coordinated brief regarding fines and remedies in these proceedings. Following an oral argument held on September 13, 2012, this ruling grants both motions, adopts a schedule for supplemental testimony and briefing, and provides notice of evidentiary hearing.

2. Additional Prepared Testimony

CPSD requests leave to serve supplemental prepared testimony in the above-captioned proceedings. CPSD also requests that the Commission permit PG&E and all parties to have an opportunity to respond to it. The supplemental testimony pertains to a study commissioned by CPSD regarding PG&E's financial resources and ability to pay fines and/or remedies up to a certain amount without directly or indirectly harming ratepayers. CPSD argues that should the Commission find that violations triggering fines pursuant to Public Utilities Code Section 2107 have occurred in any of the above-referenced proceedings, the proposed testimony is highly relevant to the consideration of the financial resources of the utility. CPSD notes that this is an important factor in determining the proper amount of fines under Commission precedent. (*See* Decision (D.) 98-12-075.) CPSD believes the Commission and the assigned Administrative Law Judges (ALJs) will greatly benefit from the information contained in the report.

We concur that the supplemental testimony offered by CPSD is relevant to these proceedings and will therefore approve the request.¹ We further concur that PG&E and other parties should have an opportunity to serve responsive testimony. The schedule appended to this ruling provides such opportunity and further provides for evidentiary hearing on a common record in these proceedings.

3. Coordinated Brief Regarding Fines and Penalties

CPSD requests permission to file a single, coordinated brief regarding fines and remedies in lieu of filing separate recommendations in the three investigations. Because of the potential liability involved in the proceedings, CPSD believes that the Commission and the assigned ALJs will greatly benefit from a consolidated, comprehensive brief on CPSD's recommendations for fines and remedies in one coordinated request. CPSD believes these three cases are inextricably linked by facts and circumstances, and that its request for a coordinated brief on fines and remedies is reasonable because the recommendation for fines and remedies should be viewed as a comprehensive whole. CPSD proposes that the coordinated brief on fines and remedies would be filed as a separate brief from the briefs on violations in the three Orders Instituting Investigation (OII's).

We concur with CPSD's argument that these cases are linked by facts and circumstances, and that a single coordinated brief on fines and remedies will significantly benefit the decisionmaking process. We therefore approve CPSD's request for permission to file a single coordinated brief.

¹ In anticipation of this ruling, by e-mail ruling on September 14, 2012 we directed CPSD to serve the testimony on September 17, 2012.

While it is both advisable and appropriate to view CPSD's recommendations for fines and remedies as a comprehensive whole, it is also necessary to understand the bases for CPSD's recommendations as they pertain to each underlying proceeding as well as the amounts of any fine recommendations that are attributable to each proceeding. We direct CPSD to include such information in its brief.

The OII in I.11-02-016 had contemplated that there be a separate penalty phase in that proceeding to determine whether penalties are warranted and the appropriate amount. By coordinating the consideration of fines and remedies as proposed by CPSD, the requirement for a separate penalty phase in I.11-02-016 will no longer be necessary.

We do not decide at this time whether or how to consolidate these proceedings for decision. We may, upon further consideration, on our own motion, order consolidation at a later date.

At the September 13, 2012 oral argument, The Utility Reform Network and other parties requested leave to file rebuttal briefs to PG&E's reply brief on fines and remedies. PG&E took the position that only CPSD should be permitted to file a rebuttal brief. We do not find that PG&E will be prejudiced by allowing all parties to file rebuttal briefs, and we note that the OII for I.12-01-007 provided the following:

The Commission also invites and encourages interested parties to actively participate in this proceeding, as it involves important safety and policy matters. The record in this proceeding and the Commission's ultimate disposition will benefit from the expertise, participation, and evidence of other

parties.²

We find that allowing all parties to file rebuttal briefs is consistent with the Commission's invitation to parties to participate actively in these proceedings. We emphasize that parties may not offer new or updated proposals or recommendations in them. To the extent that they do so, PG&E may file a motion to strike such unauthorized material.

4. Revised Procedural Schedules

At the August 29, 2012 prehearing conference in I.12-01-007, CPSD and other parties requested that they be given at least 30 days for opening briefs in that proceeding. This request is reasonable and will be granted to avoid undue prejudice to the depth and quality of the analysis in the briefs.

Pursuant to discussions at the September 13, 2012 oral argument, the parties collaboratively developed and proposed a revised procedural schedule for these proceedings, addressing both the schedule for service of testimony and hearings on PG&E's financial resources as well as post-hearing briefs addressing alleged violations and coordinated briefs on fines and remedies. The schedule appended to this ruling, which we hereby adopt, reflects the parties' recommended schedule with an adjustment to the briefing schedule for I.11-02-016 to reflect the additional hearing dates to conclude cross-examination of witnesses.

IT IS RULED that:

1. The "Coordinated Motion of The Consumer Protection and Safety Division for Leave to Serve Additional Prepared Testimony Regarding PG&E's Financial

² OII for I.12-01-007 at 9-10. The OII for I.11-02-016 (at 12) includes a similar invitation.

Resources in Proceedings Investigation (I.) 11-02-016, I.11-11-009, and I.12-01-007” is granted as set forth in the foregoing discussion.

2. The “Motion of The Consumer Protection and Safety Division for Permission to File a Single Coordinated Brief Regarding Fines and Remedies in Proceedings Investigation (I.) 11-02-016, I.11-11-009, and I.12-01-007” is granted as set forth in the foregoing discussion.

3. The procedural schedules previously adopted for these proceedings are revised as set forth in the appendix to this ruling.

4. **NOTICE IS HEREBY GIVEN** that an evidentiary hearing in these proceedings is set for Tuesday, November 13, 2012 at 10:00 a.m. in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California.

Dated September 25, 2012, at San Francisco, California.

/s/ MARK S. WETZELL

Mark S. Wetzell
Administrative Law Judge

/s/ AMY YIP-KIKUGAWA

Amy Yip-Kikugawa
Administrative Law Judge

APPENDIX
SCHEDULE FOR SUPPLEMENTAL TESTIMONY AND BRIEFING
I.11-02-016, I.11-11-009, I.12-01-007

Date	Class OII (I.11-11-009)	Records OII (I.11-02-016)	San Bruno OII (I.12-01-007)	Fines & Remedies Issues
09/17				CPSD's financial analysis testimony served
10/09	Concurrent opening briefs			
10/09				Intervenor financial analysis testimony served.
10/19	Concurrent reply briefs			PG&E financial analysis testimony served ⁱ
10/30		Concurrent opening briefs		
11/13				Evidentiary hearing on financial analysis testimony (if necessary)
11/14		Concurrent reply briefs		
11/19			Concurrent opening briefs	
11/30				Coordinated briefs on Fines and Remedies
12/07			Concurrent reply briefs	
12/14				PG&E coordinated reply brief on fines and remedies
12/21				Coordinated rebuttal briefs on fines and remedies

(END OF APPENDIX)

ⁱ CPSD may request an opportunity to provide rebuttal testimony prior to the November 13 hearing date.