



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 REGARDING
MOTION OF CONSUMER PROTECTION AND SAFETY DIVISION
TO SUSPEND PROCEEDINGS IN ORDER TO FACILITATE
NEGOTIATIONS TOWARD A STIPULATED OUTCOME AND
NOTICE OF REVISED HEARING SCHEDULE**

1. Summary

On October 5, 2012, the Consumer Protection and Safety Division (CPSD) filed a motion in Investigation (I.) 12-01-007, I.11-02-016, I.11-11-009, and Rulemaking (R.) 11-02-019 requesting suspension of all procedural dates and activities in all four of these dockets in order to facilitate good-faith negotiations among the parties toward a stipulated outcome. We grant CPSD's motion in part and deny it in part as set forth in the discussion below. In summary, we suspend the schedule for evidentiary hearings and briefing until November 1, 2012 to enable the parties to engage fully in negotiations. Because, as CPSD's motion states, there is no guarantee that a negotiated solution will emerge, this ruling provides for the resumption of evidentiary hearings and briefing after November 1, 2012.

This ruling resolves CPSD's motion only insofar as it pertains to I.12-01-007, I.11-02-016, and I.11-11-009. As it pertains to R.11-02-019, the motion will be resolved by separate ruling in that proceeding.

2. Background

Evidentiary Hearings (EHs) have concluded in I.11-11-009 and the matter is ready for post-hearing briefing except with respect to financial analysis testimony. Hearings are still underway in I.12-01-007 and I.11-02-016. By ruling dated September 25, 2012, we granted a motion by CPSD to serve supplemental testimony regarding the financial resources of respondent Pacific Gas and Electric Company (PG&E) and PG&E's ability to pay fines and remedies and a separate motion by CPSD for permission to file a single coordinated brief regarding fines and remedies in the captioned proceedings. The September 25 ruling adopted a coordinated procedural schedule for concurrent opening and

reply briefs in each of the captioned proceedings and, with respect to fines and remedies, a schedule for service of testimony, hearings, and briefing.

When CPSD filed its motion to suspend proceedings on October 5, 2012, evidentiary hearings in I.12.01-007 were scheduled to resume on October 8, 2012 at 9:30 a.m. On October 6, 2012 the assigned Administrative Law Judge (ALJ) in I.12-01-007 sent an e-mail notice to parties advising them that (1) the hearing would be convened as scheduled, (2) the scheduled witnesses need not appear at 9:30 a.m. but should remain available to be called on two hours notice, and (3) the ALJ intended to discuss the impact of the CPSD motion on the hearing schedule in that proceeding. On October 8, 2012, by oral ruling, the ALJ suspended the hearing schedule for I.12-01-007 by one week.¹ Additionally, by e-mail notice sent on October 8, we extended by one week, from October 9 to October 16, 2012, both the date for filing of concurrent opening briefs in I.11-11-009 and the date for service of intervenor financial testimony in all three proceedings. Timely responses were filed by PG&E, the Utility Workers Union of America, Californian's for Renewable Energy, Inc., The Utility Reform Network (TURN), City of San Bruno, Southwest Gas Corporation, City and County of San Francisco (CCSF), and the Division of Ratepayer Advocates (DRA). In this ruling we consider the responses as they pertain to one or more of the captioned proceedings. We do not address the responses to the extent that they pertain only to R.11-02-019. As noted in an e-mail ruling to parties on October 10, 2012 clarifying the October 8 ruling, a response filed across all of

¹ I.12-01-007, Tr. Vol. 7 at 526. In light of this ruling, the evidentiary hearing scheduled in I.11-02-016 was reset from October 11, 2012 to October 15, 2012.

these proceedings does not confer party status in those proceedings where the filer is not already a party.

Finally, in a ruling entered on October 8, 2012 in I. 12-01-007, I.11-02-016, I.11-11-009, and R.11-02-019, the assigned ALJs provided that parties may file and serve responses to the CPSD motion no later than October 10, 2012.

3. Suspension of Proceedings to Facilitate Negotiations

CPSD requests suspension of proceedings, particularly EHs, because the pendency of ongoing proceedings is impeding the ability of parties to engage fully in negotiations that have commenced in recent weeks. CPSD states that suspending proceedings will allow parties “time and space” to allow negotiations to proceed unimpeded. CPSD contends that it is clear that the effort would be worthwhile. In support of CPSD’s motion to suspend, PG&E contends that a Commission decision(s) resolving the three investigation proceedings would not be issued until mid-2013, whereas the Commission could address a proposed stipulation before the end of this year.

In view of the complex and highly contested nature of these proceedings, we are persuaded that a stipulated outcome developed in accordance with our settlement rules² may be a reasonable alternative to litigated outcome. Further, while we recognize that a stipulated outcome may not be achieved, and that some delay would result if the suspension of proceedings is lifted and the litigation process resumes, we are persuaded that the potential for more expeditious resolution of these matters more than offsets that possibility of delay.

² Rules of Practice and Procedure, Article 12.

CCSF and DRA suggest that it would be appropriate to conclude the evidentiary hearings before suspending proceedings. While this approach may be a reasonable alternative to the CPSD proposal, we find it is preferable to suspend hearings at this time. Based on parties' estimates of cross examination time, several more hearing days are required over a two-week period. In addition, hearing time has been reserved to consider testimony on PG&E's financial resources. TURN correctly points out that one reason the parties may not have made sufficient progress in negotiations is that they have been consumed with the preparation for and conduct of litigation and have not been able to devote time to intensive negotiations. By suspending proceedings at this time, we enable parties to focus their efforts on negotiations that potentially could lead to a stipulated outcome. We therefore will approve in part CPSD's request to suspend proceedings until November 1, 2012.

CPSD requests that the suspension of proceedings encompass not only ongoing evidentiary hearings but also the issuance of any further order, rulings, or proposed decisions. Such an all-encompassing suspension could preclude the issuance of rulings on routine procedural matters such as motions for party status or decisions extending statutory deadlines. We will limit the scope of the suspension of proceedings to evidentiary hearings, service of testimony, and briefing. The ALJs and the Commission reserve right to enter rulings and decisions as necessary or appropriate.

CPSD requests that discovery in the three investigation proceedings continue. This request is approved. Parties are on notice that the suspension of the procedural schedule granted by this Ruling shall not be used an excuse for failing to respond to data requests in a timely manner.

Finally, CPSD requests that parties be directed to report back to the

assigned Commissioners and ALJs within two weeks regarding the progress, if any, in the negotiations. This request is appropriate and will be approved.

Because CPSD is the moving party, we will impose the reporting requirement on it. CPSD shall file a status report in the captioned proceedings, on behalf of all parties participating in settlement negotiations, by October 25, 2012.

4. Revised Procedural Schedules

The schedule appended to this ruling reflects the foregoing discussion and supersedes and replaces the schedule appended to our September 25, 2012 ruling. The hearing dates were selected based on availability of courtrooms, hearing reporters, and scheduling constraints. Certain hearing dates may be limited to I.12-01-007 only and certain other dates may be limited to I.12-01-007 and I.11-02-016, while hearings on PG&E's financial resources and ability to pay fines and remedies pertain to all three investigations. At this time we are scheduling the hearings for all three proceedings without designating which days are reserved for which proceedings. We direct the parties to prepare and submit to the ALJs a proposed updated schedule of witnesses along with updated estimates of cross-examination time not later than one week prior to the commencement of hearings on November 26, 2012.

5. Caption Format for Documents Served or Filed in the Coordinated Proceedings

Under the Commission's protocols for filing documents when there are multiple captions in coordinated, not consolidated, proceedings, the ALJ may direct that a particular caption be the "Lead" caption, such that it will always appear first when the Title Page is drafted. For purposes of these coordinated proceedings, the "Lead" caption shall be I.12-01-007, followed by I.11-02-016 and

I.11-11-009, respectively.³ Therefore, all future filings concerning the coordinated proceedings, such as testimony or briefs related to fines and remedies, shall conform to this format.

IT IS RULED that:

1. The “Motion of The Consumer Protection and Safety Division to Suspend Proceedings, in Order to Facilitate Negotiations Toward a Stipulated Outcome” is granted in part and denied in part as set forth in the foregoing discussion and in the following ruling paragraphs.

2. The schedule for evidentiary hearings, service of testimony, and briefing in these proceedings is suspended until November 1, 2012. Discovery may continue.

3. Consumer Protection and Safety Division shall file a status report regarding the progress, if any, in the negotiations toward a stipulated outcome by October 25, 2012.

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

5. For purposes of these coordinated proceedings, the “Lead” caption shall be Investigation (I.) 12-01-007, followed by I.11-02-016 and I.11-11-009, respectively.

6. The evidentiary hearing (EH) in I.12-01-007 set for October 15 through 19, 2012, the EH in I.11-02-016 set for October 15, 2012, and the EH in I.11-02-016, I.11-11-009, and I.12-01-007 set for November 13, 2012 are removed from calendar.

³ Please refer to the Title Page of this Ruling.

7. An evidentiary hearing in these proceedings is set for Monday November 26, 2012 at 9:30 a.m. in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California. Hearings will continue as needed on November 27-29, December 3-6, and January 8, 2013. The daily hearing schedule is 9:30 a.m. to 4:30 p.m. except November 29, 2012, when the schedule is 1:00 p.m. to 4:00 p.m.

Dated October 11, 2012, at San Francisco, California.

/s/ MARK S. WETZELL
Mark S. Wetzell
Administrative Law Judge

/s/ AMY C. YIP-KUKUGAWA
Amy C. Yip-Kikugawa
Administrative Law Judge

APPENDIX

APPENDIX
SCHEDULE FOR SUPPLEMENTAL TESTIMONY AND BRIEFING
I.12-01-007, I.11-02-016, I.11-11-009⁴

Date	Class OII (I.11-11-009)	Records OII (I.11-02-016)	San Bruno OII (I.12-01-007)	Fines & Remedies Issues
10/25/12	Status report on negotiations	Status report on negotiations	Status report on negotiations	Status report on negotiations
11/01/12	Suspension of proceedings lifted	Suspension of proceedings lifted	Suspension of proceedings lifted	Suspension of proceedings lifted
11/09/12	Concurrent opening briefs			Intervenor financial analysis testimony served
11/19/12	Concurrent reply briefs			PG&E financial analysis testimony served ⁱ
11/26/12		Evidentiary hearings resumed	Evidentiary hearings resumed	Evidentiary hearing on financial analysis testimony (if necessary)
12/06/12		Evidentiary hearings concluded on or before this date	Evidentiary hearings concluded on or before this date	
01/08/13				Evidentiary hearings concluded on or before this date
To be determined		Concurrent opening briefs		
To be determined				
To be determined		Concurrent reply briefs		
To be determined			Concurrent opening briefs	
To be determined				Coordinated briefs on Fines and Remedies
To be determined			Concurrent reply briefs	

⁴ This schedule supersedes the procedural schedule appended to the Administrative Law Judges' ruling dated September 25, 2012.

To be determined				PG&E coordinated reply brief on fines and remedies
To be determined				Coordinated rebuttal briefs on fines and remedies

ⁱ CPSD may request an opportunity to provide rebuttal testimony prior to the January 8, 2013 hearing date.

(END OF APPENDIX)