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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)

PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO REOPEN EVIDENTIARY RECORD IN THE COORDINATED PENALTY PHASE; REQUEST FOR ORDER SHORTENING TIME FOR RESPONSE AND VACATING BRIEFING SCHEDULE ESTABLISHED IN JULY 12, 2013 EMAIL RULING

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OF THE STATE OF CALIFORNIA

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As much as any party, PG&E would like to bring these proceedings to a conclusion, resolve its liabilities and focus on moving forward with investments that will strengthen its gas delivery system and assure that the tragedy of San Bruno is never repeated. Yet our desire for resolution must give way to an insistence on due process and the rule of law in the face of CPSD's filing, which veered far from the "corrections" of its earlier brief it had promised. Under CPSD's new proposal, PG&E estimates that total shareholder costs for its gas

[1] Pursuant to *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964), PG&E expressly reserves its federal constitutional and any other federal claims and reserves its right to litigate such claims in federal court following any decision by the Commission, if necessary.

transmission operations and related fines will exceed $4 billion – an increase of approximately $1.8 billion over CPSD's original proposed penalty. And, CPSD's new penalty proposal is based on assumptions, mistaken "facts," and a distortion of the conclusions of its own witness about PG&E's capacity to absorb financial penalties without harming its ability to raise capital to invest in the utility system. As the party facing billions of dollars in fines and penalties and the risk of harm to its ability to finance new investments to keep its system safe, PG&E is entitled to more than the limited response urged by CPSD. Due process requires that PG&E be given a full and fair opportunity to respond by submitting additional evidence necessary for the Commission to accurately judge CPSD's new proposal.

Pursuant to Rule 13.14(b) of the Commission's Rules of Practice and Procedure, PG&E moves to reopen the evidentiary record in the coordinated penalty phase of I.11-02-016, I.11-11-009 and I.12-01-007. This motion is made on the grounds that CPSD's new penalty recommendation, made for the first time on July 16, 2013, materially changes the relevant facts and law, as detailed below, and PG&E needs to submit additional evidence in order to correct factual errors and provide a complete record for the Commission's decision. PG&E has a constitutional right to meaningfully respond to CPSD's new assertions, and the Commission needs a complete and accurate evidentiary record to make a just and reasonable decision in these proceedings.

As required by Rule 13.14, Section II.A below provides a brief statement of the proposed additional evidence.

Because PG&E's response to CPSD's new proposal is currently due on July 25th, PG&E requests an order shortening time for response to this motion and immediately vacating the briefing schedule established by the ALJs' July 12, 2013 email ruling granting CPSD's motion to file an amended reply brief.[2]

I. CPSD'S NEW PENALTY PROPOSAL REPRESENTS A MATERIAL CHANGE AFTER THE CLOSE OF THE EVIDENTIARY RECORD AND BRIEFING.

Having obtained leave to file an amended reply brief on penalties to "correct certain inaccuracies in statements"[3] in its original brief, CPSD submitted a new penalty proposal on July 16th. This new proposal relies on different law and different purported facts than CPSD's prior

[2] Administrative Law Judges' Ruling Granting CPSD Motion to File an Amended Reply Brief on Fines and Remedies, July 12, 2013.

[3] CPSD Motion for Procedural Rulings at 2.

proposal. PG&E has not had an opportunity to respond to the purported facts now relied on by CPSD or to respond to CPSD's proposal. Due process and the Commission's desire to reach a just and reasonable conclusion require a complete and accurate evidentiary record, and that can only be achieved now by reopening the record in the penalty phase.

The Commission regularly reopens the evidentiary record when the situation warrants it.[4] While the Commission does not appear to have articulated a concrete standard, Rule 13.14(b) of the Commission's Rules of Practice and Procedure contemplates that the record should be reopened where "material changes of fact or of law" have occurred. Here, CPSD has abandoned its original penalty proposal based on the existing evidentiary record in favor of new and unsupported assertions and rationales regarding the amount and form of penalty.

The core of CPSD's evidence in the combined penalty phase of these OIIs was provided by Overland Consulting (Overland). Overland's original report contended that PG&E could raise $2.25 billion in new equity to fund a Commission-imposed "fine."[5] Because Overland's report explicitly addressed a "fine," the responsive report by Eric Fornell of Wells Fargo focused on the issue of a "fine," market expectations concerning a fine, and PG&E's ability to raise equity to pay a fine.[6] In its rebuttal report, Overland clarified for the first time, that it meant that $2.25 billion was the maximum amount of new equity PG&E could raise to fund a fine and <u>all other unrecovered and unrecoverable costs</u>.[7] Because Overland's clarification came after PG&E submitted its responsive testimony, PG&E did not have an opportunity to submit comprehensive evidence of its unrecovered and unrecoverable costs, although some evidence of those costs came in during cross-examination of Overland.[8]

CPSD's original penalty recommendation did not include a fine and, consistent with the Overland analysis on which it was based, required an audit of PG&E's actual gas safety spending

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[4] *See, e.g.*, *Application of S. Cal. Gas Co.*, D.09-01-009, 2009 Cal. PUC LEXIS 39; *Order Instituting Rulemaking*, D.04-07-036, 2004 Cal. PUC LEXIS 337, at *11-12; *Application of S. Cal. Water Co.*, D.93-06-035, 1993 Cal. PUC LEXIS 475, at *47-49.

[5] Ex. Joint-51 at 1 (CPSD/Overland). As in its Coordinated Remedies Brief, PG&E refers to Mr. Lubow and Professor Malko individually and collectively as "Overland."

[6] Ex. Joint-66 at 2-4 (PG&E/Fornell).

[7] Ex. Joint-53 at 27. *See also* Joint R.T. 1367-71 (CPSD/Overland).

[8] *See* Joint R.T. 1362, 1389-94 (CPSD/Overland); Ex. Joint-57; Ex. Joint-58; Ex. Joint-59.

to reconcile it with CPSD's proposed $2.25 billion penalty.[9] Now, CPSD has jettisoned that approach. CPSD's new proposal includes both a fine payable to the State General Fund (which, of course, does not benefit system safety investment) and additional disallowances of PSEP Phase I and future PSEP costs in the next rate case. These are based on CPSD's beliefs and factual assumptions and adjustments to the Commission's determinations in D.12-12-030 that have no support in the evidentiary record and, as PG&E's supplemental evidence will show, are refuted by the facts.

Contrary to the Overland report on which it is supposedly based, CPSD's new proposal disregards most of the costs that PG&E's shareholders have incurred and will incur to improve PG&E's gas operations. Under CPSD's original proposal "[a]ny bona fide safety enhancement to PG&E's gas transmission or distribution system made at shareholder expense" would have been "eligible to satisfy" CPSD's proposed $2.25 billion penalty.[10] Under the current proposal, CPSD counts only $435 million of the PSEP costs borne by PG&E's shareholders under D.12-12-030 in the $1.950 billion CPSD proposes that PG&E's shareholders should have to spend to fund PSEP Phase I, the costs of complying with CPSD's proposed remedies, and future PSEP costs in the next rate case. CPSD contends that the $435 million represents the "approximate amount . . . that PG&E must still raise for capital for its disallowed PSEP costs" based on a tortured calculation that includes a number of factual errors, including CPSD's unsupported and incorrect assertion that PG&E is "unlikely" to spend any of the $380.5 million contingency that the Commission did not authorize PG&E to include in rates in D.12-12-030.[11] PG&E will show that using the contingency is not only "likely," but that those dollars are already being spent.

CPSD has misused Overland's conclusions to argue for a level of penalty that Overland's testimony does not support. CPSD has not "corrected inaccuracies," it has fostered them. PG&E must be able to provide the additional evidence that is necessary to set the record straight.

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[9] *See* CPSD Remedies Reply Brief at 4 ("The Commission should order all expenses be subject to third-party auditing.").

[10] CPSD Remedies Reply Brief at 3-4.

[11] Amended Reply Brief at 4.

II. THE COMMISSION SHOULD REOPEN THE RECORD TO ALLOW PG&E TO SUBMIT EVIDENCE TO CORRECT FACTUAL ERRORS AND PROVIDE THE COMMISSION WITH THE INFORMATION IT NEEDS TO ASSESS CPSD'S NEW PENALTY PROPOSAL.

PG&E seeks to reopen the record to correct misstatements of fact in CPSD's brief and to introduce information that is essential for the Commission to properly assess CPSD's new remedy proposal.

A. The Evidence PG&E Will Submit When The Record Is Reopened

As required by Rule 13.14(b), PG&E provides the following brief statement of the proposed additional evidence it will submit:

- Information relating to PG&E's actual and forecast spending over and above the PSEP authorized amounts. In D.12-12-030, the Commission denied PG&E's request for a risk contingency of $380.5 million for all categories of work included in the PSEP.[12] CPSD incorrectly assumes that PG&E has not and will not spend any of this contingency, asserting that it is "unlikely that PG&E will actually expend $380.5 million in cost overruns, and thus there will be no impact on PG&E's ability to raise equity capital to pay fines and future expenses."[13] PG&E's evidence will demonstrate that its actual PSEP costs in fact have been higher than the costs authorized by D.12-12-030.
- Information regarding other unrecovered and unrecoverable costs PG&E's shareholders have incurred or will incur. Given that Overland's estimate of the maximum new equity PG&E can raise includes all unrecovered and unrecoverable costs, information about actual and forecast gas transmission costs above the adopted Gas Accord V amounts, actual and forecast gas distribution costs above the amounts adopted in the 2011 General Rate Case (GRC), and other categories of costs incurred by PG&E's shareholders is critical to the Commission's assessment of CPSD's new penalty proposal.

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[12] *See* D.12-12-030 (mimeo) at 97-100.

[13] Amended Reply Brief at 4. Although the information is not currently in this record, CPSD is aware that PG&E's shareholders funded approximately $600 million in PSEP expense costs and more than $40 million in PSEP capital expenditures in 2011 and 2012 and are expected to fund an additional $300 million in PSEP-related expenses and more than $300 million in PSEP capital expenditures in 2013 and beyond. *See* May 16, 2013 letter from Anthony F. Earley Jr. to Brigadier General Emory J. Hagan, III, Director of the Safety and Enforcement Division.

- Information relating to PG&E's accrual of $200 million for potential penalties. CPSD incorrectly claims, "PG&E has already raised $200 million in equity capital in 2012 to pay an anticipated fine."[14] PG&E will introduce evidence correcting CPSD's error.
- Current ratings agencies' reactions to CPSD's new penalty proposal. CPSD's new proposal, if adopted, would have a much greater financial impact on PG&E than its original proposal. When considering CPSD's proposed penalty, the Commission also should consider the ratings agencies' assessments of the impact that CPSD's proposed penalty could have on PG&E's financial condition and its ability to raise capital to fund ongoing operations and infrastructure improvements.

By introducing this evidence, PG&E does not intend to ask the Commission to make any determination at this time about the amount of unrecovered and unrecoverable costs PG&E has and will incur. Rather, it is to demonstrate that CPSD's new disallowance proposal is inconsistent with the Overland analysis on which CPSD says it is based. If the Commission adopts any recommendation that shareholders fund a specific amount of gas transmission costs, PG&E expects that its actual spending will be audited to verify compliance.

B. The Information PG&E Seeks To Introduce Is Essential To The Commission In Assessing CPSD's Proposed Penalty.

CPSD explicitly bases its new penalty proposal on Overland's testimony regarding "PG&E's ability to raise capital [of] $2.25 billion."[15] According to CPSD, "the entire reason that CPSD retained Overland Consulting was to consider the maximum PG&E could afford without affecting its creditworthiness."[16] PG&E's financial resources and ability to pay should not be the starting point for setting a penalty, and PG&E disagrees that Overland's approach provides a reasonable basis for determining the size of penalty that PG&E reasonably could absorb.[17]

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[14] Amended Reply Brief at 4.

[15] Amended Reply Brief at 4. To varying degrees, all Intervenors also use Overland's $2.25 billion "threshold level" as a starting point for their proposed penalties. *See* CPSD Remedies Opening Brief at 52-53; San Bruno Remedies Reply Brief at 2, 14-15; DRA Remedies Opening Brief at 18-20, 25-26; TURN Remedies Opening Brief at vii, 31-33; CCSF Remedies Opening Brief at 15.

[16] Amended Reply Brief at 8-9.

[17] *See* PG&E Coordinated Remedies Brief at 73-79.

Assessing CPSD's new proposed penalty requires, however, understanding Overland's testimony.

Overland claimed that PG&E could issue a maximum of $2.25 billion in new equity – what Overland called the "threshold level" – to fund <u>any</u> unrecovered and unrecoverable costs, including but not limited to a penalty in these proceedings.[18] As Overland explained, its analysis focused on determining the total amount of "nonrevenue producing" costs PG&E could incur without undue financial harm.[19] Overland agreed for these purposes that a penalty would include costs that "shareholders are responsible for either because it is a fine that is paid to the State General Fund, it is costs that are being incurred for Commission-approved activities but not allowed into rates, like some of the pipeline safety enhancement plan costs, or other costs that the company has incurred and is continuing to incur that are above and beyond whatever was in rates."[20]

Thus, under Overland's approach – on which CPSD purports to rely – the Commission must take into account <u>all</u> costs PG&E's shareholders have incurred or will incur in addition to any penalty in these proceedings. CPSD's proposed penalty recognizes this up to a point by taking into account a portion of the disallowed PSEP costs.[21] As CPSD itself explained, "the Commission's disallowed amounts are not part of a 'credit mechanism.' **They involve dollars which PG&E still must raise through the equity capital market as part of the same $2.25 billion which the Overland Consulting group claimed was the necessary limit** to which the Commission could disallow amounts or impose fines on PG&E for its violations in the OIIs without affecting PG&E's creditworthiness."[22] CPSD's new proposal, however, stops far short of including all shareholder costs that need to be taken into account under Overland's approach to determining the incremental amount of equity PG&E can issue to fund any penalty or other remedy in these cases.

CPSD artificially limits even the PSEP-related costs by (1) incorrectly assuming PG&E will not spend any of the $380.5 million contingency; (2) subtracting $200 million from

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[18] Ex. Joint-53 at 22, 27 (CPSD/Overland); Joint R.T. 1367, 1369-71 (CPSD/Overland).

[19] Joint R.T. 1367 (CPSD/Overland).

[20] Joint R.T. 1370-71 (CPSD/Overland).

[21] *See* Amended Reply Brief at 4 (proposed penalty should be allocated in part to "$435 million to pay for the remaining disallowances for shareholders from D.12-12-030").

[22] CPSD Response to San Bruno Motion to Strike at 2 (emphasis added).

shareholder costs because PG&E purportedly already raised equity to fund a penalty in that amount; and (3) failing to take into account any additional spending above PG&E's PSEP forecasts. Under Overland's approach, it is irrelevant whether PG&E needs to issue equity to fund an explicit "disallowance"[23] or because it spent more than the adopted rate case amounts.[24] Furthermore, Overland's approach would not limit the consideration of actual shareholder costs to those relating to PSEP. Overland did not dispute on cross-examination that disallowances in D.12-12-030, spending above gas transmission or gas distribution adopted rate case amounts, and right of way management costs, among other potential costs, all could count towards the "threshold level" of equity.[25] For these reasons, the Commission should have in the record and consider evidence regarding PG&E's unrecovered and unrecoverable costs in assessing the reasonableness of CPSD's penalty proposal, which is explicitly based on Overland's testimony.

The basis for reopening the record to admit new ratings agency reports is somewhat different. Overland and PG&E's witness Mr. Fornell of Wells Fargo both discussed the importance of PG&E maintaining a strong debt rating and the role of market expectations in their testimony.[26] As Mr. Fornell explained, "any penalty that is larger than the market expects will hurt [PG&E's] ability to raise equity by sending a signal that the regulatory climate in California has changed in such a manner as to hinder PG&E's long-term business prospects and increase the risk of investing in the Company."[27] CPSD introduced a Standard & Poor's (S&P) report regarding PG&E into evidence at the March 4 and 5, 2013 hearings.[28] Ratings agency reports provide important insight into the market's perception of PG&E and the California regulatory environment and the extent to which CPSD's proposed penalty, if adopted, could affect PG&E's

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[23] In fact, as CPSD acknowledges, the contingency amounts "were not truly disallowed . . . . The Commission found that they would not likely occur and thus did not allow PG&E to recover them." Amended Reply Brief at 4 n.3.

[24] *See* Joint Sealed R.T. 1432 (CPSD/Overland); *see also* Ex. Joint-66 at 19-20 (PG&E/Fornell).

[25] Joint R.T. 1392-94 (CPSD/Overland); Ex. Joint-59; *see also* Joint Sealed R.T. 1427-28 (CPSD/Overland).

[26] Ex. Joint-53 at 4-8 (CPSD/Overland); Ex. Joint-66 at 10-14, 16-17, 19-22 (PG&E/Fornell).

[27] Ex. Joint-66 at 19.

[28] Ex. Joint-72.

ability to raise capital. For example, on July 17, 2013, S&P issued a bulletin regarding CPSD's revised penalty proposal stating:

> [I]f the commission adopts the staff's revised proposal, Standard & Poor's would review its assessment of the California regulatory jurisdiction, which we currently assess as 'more credit supportive.' A downward revision to this assessment could affect ratings on all electric, gas, and water companies that the CPUC regulates.[29]

Similarly, Moody's made the following announcement on July 10, 2013 in response to the filing of CPSD's motion to amend its reply brief: "Moody's views this request to have negative credit implications for PG&E since it could lead to a higher penalty amount than previously thought and does not bode well for the regulatory environment in California, which is being adversely affected by political considerations."

As PG&E's supplemental evidence will demonstrate, CPSD's new proposal represents an increase of approximately $1.8 billion over its original recommendation. The record already shows that PG&E needs to issue very large amounts of both debt and equity to fund ongoing operations and planned infrastructure improvements.[30] PG&E should be permitted to introduce recent ratings agency reports addressing CPSD's new penalty proposal so that the Commission can consider this important information in assessing CPSD's recommendation.

C. PG&E Did Not Previously Introduce This Evidence Because It Was Not Relevant To Overland's Original Report And PG&E Did Not Know Of CPSD's New Penalty Proposal.

PG&E did not previously seek to introduce detailed evidence regarding actual and forecast PSEP costs and other categories of unrecovered and unrecoverable costs because it was not relevant to Overland's original report and it was not essential to assessing CPSD's original penalty proposal. In its August 21, 2012 report, Overland explained that the purpose of its analysis was to examine PG&E's financial health and provide its "estimate of [PG&E's] ability to raise equity capital sufficient to fund a CPUC imposed fine."[31] PG&E therefore understood that Overland's $2.25 billion "threshold level" represented the amount of equity that Overland believed PG&E could issue to fund a fine or penalty. Mr. Fornell of Wells Fargo submitted a

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[29] CPSD introduced S&P's March 2010 report in which it placed California among the "more credit supportive" states. *See* Joint R.T. 1483-85 (PG&E/Fornell); Ex. Joint-75.

[30] Ex. Joint-66 at 16-17; *see also* PG&E Coordinated Remedies Brief at 65-67.

[31] Ex. Joint-51 at 1 (CPSD/Overland).

report responding to Overland's August 2012 report,[32] but PG&E did not offer evidence regarding actual and forecast PSEP or other costs because those costs did not appear to be relevant to Overland's analysis. It was not until Overland's rebuttal testimony, when PG&E could not introduce additional direct testimony, that Overland stated for the first time that its "analysis was not solely focused on fines."[33] Overland further explained on cross-examination that its "threshold level" of $2.25 billion represents the amount of equity Overland testified PG&E could issue for *all* costs "that would be the shareholder responsibility as opposed to any ratepayer responsibility."[34] At the March 4, 2013 hearing, PG&E introduced evidence of costs incurred by its shareholders as described in its 2012 annual report and February 2013 Fourth Quarter Earnings Call presentation.[35] This evidence was necessarily incomplete, however, as it was used for purposes of cross-examining Overland. As the ALJs are aware, PG&E subsequently included summary information regarding current PSEP spending and other shareholder costs in its Coordinated Remedies Brief filed on May 24, 2013. The ALJs granted CPSD's motion to strike that information as outside the record, and PG&E was ordered to refile its remedies brief with the relevant information stricken.[36]

PG&E did not seek to reopen the record at that time because detailed information about the costs that PG&E's shareholders had incurred and would incur was not essential to analyzing CPSD's original penalty proposal. Under CPSD's original proposal all gas safety-related costs made at shareholder expense could have been counted towards CPSD's proposed $2.25 billion penalty.[37] In other words, CPSD's original proposal was consistent with Overland's testimony because it counted all categories of unreimbursed costs towards the $2.25 billion total penalty. And, because CPSD's proposal required that PG&E's unreimbursed gas safety spending be audited,[38] there was no need for detailed cost information to be in the record for the Commission to assess CPSD's proposal. In contrast, CPSD's new penalty proposal is inconsistent with Overland's testimony because it fails to consider the total amount of PSEP costs borne by

[32] *See* Ex. Joint-66.

[33] Ex. Joint-53 at 27 (CPSD/Overland).

[34] Joint R.T. 1370 (CPSD/Overland).

[35] *See* Ex. Joint-57; Ex. Joint-58; Ex. Joint-59.

[36] *See* June 3, 2013 email ruling granting CPSD's motion to strike.

[37] CPSD Remedies Reply Brief at 3-4.

[38] *See* CPSD Remedies Reply Brief at 4 ("The Commission should order all expenses be subject to third-party auditing.").

PG&E's shareholders and disregards entirely other shareholders costs. Because CPSD's proposed penalty takes into account only $435 million in costs incurred by PG&E's shareholders, the Commission cannot appropriately assess the recommendation without the information PG&E will introduce after the record is reopened. Furthermore, CPSD's new brief misstates the facts regarding PG&E's PSEP spending and the $200 million accrual, and PG&E should be allowed an opportunity to introduce evidence to correct these misstatements.

III. THE ALJS SHOULD IMMEDIATELY VACATE THE BRIEFING SCHEDULE IN THE JULY 12, 2013 EMAIL RULING.

As of today, under the ALJs' July 12th email ruling, PG&E is to submit a response of no more than 10 pages to CPSD's amended reply brief on July 25th, with CPSD's and Intervenors' further responses due August 1st. Without regard to this motion, the ALJs should immediately vacate that briefing schedule and the page limitations. The ALJs should establish an appropriate new schedule and procedure following the decision on this motion.

A. Regardless Of The Decision On This Motion, The ALJs Should Give PG&E More Pages And Time To Respond To CPSD's Amended Reply Brief.

Referencing but not describing "good cause shown," the July 12th email ruling granted CPSD's request to file an amended reply brief.[39] Because CPSD said it could describe its new penalty proposal in 10 pages, CPSD suggested that PG&E should be required to respond in 10 pages, and do so in seven days.[40] The ALJs adopted CPSD's suggestion on page limits and gave PG&E only an additional three days, though without articulating the basis on which this could be sufficient to respond to CPSD's then-unknown contentions.[41] As a result of what CPSD filed and as shown above, the limitations are arbitrary and without any basis other than CPSD's assertion they were good enough for PG&E.

PG&E cannot adequately respond in 10 pages and nine days to a new penalty proposal that departs from the evidentiary record and briefing that preceded it. Nor is the process established by the July 12th email ruling remotely fair to PG&E. That ruling limits PG&E to 10 pages to respond to CPSD's new penalty proposal, while giving CPSD and Intervenors, who are

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[39] July 12th email ruling.

[40] Motion for Procedural Rulings at 2.

[41] July 12th email ruling. As noted, PG&E actually has only 9 days to respond because CPSD did not file its amended reply brief until July 16, 2013.

aligned and work cooperatively against PG&E, a total of 50 pages to respond to whatever PG&E files.[42]

Whether or not the ALJs grant PG&E's motion and reopen the record, as they should, the briefing procedure established by the July 12th email ruling must be revised. PG&E's response should not be limited, and PG&E should have 14 days from the ALJs' ruling on this motion to submit that response.

B. In Granting The Motion, The ALJs Should Establish A Fair And Appropriate Procedure To Conclude The Reopened Penalty Phase.

At a minimum, PG&E should be given 14 days from the date of the ALJs' ruling to submit the evidence described above. PG&E recognizes that CPSD and other parties will want the opportunity to test and respond to that evidence. PG&E recommends that CPSD and the other parties be given 21 days to submit any additional evidence. After the submission of all parties' evidence, the ALJs should set a new schedule for PG&E's response to CPSD's amended reply brief and CPSD's and Intervenors' response to PG&E.

IV. CONCLUSION

Having allowed CPSD to change its penalty recommendation a month and a half after the close of briefing, the ALJs must now make that decision compatible with the requirements of due process by according PG&E a full and fair opportunity to respond to the new facts and positions asserted by CPSD. That requires that the schedule and procedure set by the ALJs' July 12th email ruling be immediately vacated, the record for the penalty phase reopened, and a new schedule and procedure established that does not tie PG&E's hands and give CPSD and the intervenors another procedural advantage.

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[42] Intervenors' briefs are replete with statements that CPSD is correct in its allegations. *See, e.g.*, TURN Records OII Opening Brief at 17 ("CPSD has convincingly demonstrated the violations alleged in its reports and testimony."); San Bruno Records OII Reply Brief at 20 ("San Bruno urges the Commission to adopt findings consistent with the issues identified in CPSD's Incident Investigation Report, CPSD's Opening Brief and Appendix A, CPSD's Reply Brief along with any violations related to such issues advocated by CPSD."); DRA Remedies Opening Brief at 2 ("CPSD has proved thousands of violations with an enormous amount of solid evidence painstakingly collected, analyzed, and presented."); DRA Remedies Reply Brief at 4 ("Every party, except PG&E, recognizes that PG&E faces minimum fines in the tens of billions of dollars, and maximum fines exceeding several hundred billion dollars[.]"); CCSF Remedies Opening Brief at 1 ("CPSD presented extensive and compelling reports and testimony outlining PG&E's violations and the harms and risk they created."); TURN Remedies Reply Brief at 26 ("The testimonies and briefs of CPSD and intervenors show that potential penalties for violations and disallowances for imprudence could well exceed PG&E's financial resources.").

PG&E's motion to reopen the evidentiary record in the penalty phase should be granted.

Respectfully submitted,

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