BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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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)
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CITY OF SAN BRUNO'S APPEAL OF THE PRESIDING OFFICERS' DECISION ON FINES AND REMEDIES TO BE IMPOSED ON PACIFIC GAS & ELECTRIC COMPANY FOR SPECIFIC VIOLATIONS IN CONNECTION WITH THE OPERATION AND PRACTICES OF ITS NATURAL GAS TRANSMISSION PIPELINES

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I. INTRODUCTION

Pursuant to Rule 14.4 of the California Public Utilities Commission's ("Commission" or "CPUC") Rules of Practice and Procedure ("Rules") and Administrative Law Judges Mark Wetzell and Amy Yip-Kikugawa's decisions relating to fines and remedies in Investigations I.12-01-007, I.11-02-016, I.11-11-009 ("Line 132 proceedings"), the City of San Bruno ("San Bruno") hereby submits this appeal of the Presiding Officers' Decision ("POD"). This appeal is limited to the POD concerning fines and remedies to be imposed on Pacific Gas & Electric Company ("PG&E"). San Bruno does not appeal the three individual decisions in the Line 132 proceedings.

Specifically, this appeal is limited to two penalties that San Bruno and other intervenors requested in their briefs, but the POD rejected: the establishment of 1) an Independent Monitor; and 2) a Pipeline Safety Trust. San Bruno believes the POD commits legal and factual error by rejecting these two penalties. The Commission should not disregard these proposed remedies because they may require further efforts on behalf of the parties and Commission, or are outside the CPUC's comfort zone. The Commission needs no reminding of the importance and uniqueness of these proceedings. The presiding officer acknowledged such by imposing a significant fine against PG&E.[1] The ultimate decision on fines and penalties must provide real, positive change for PG&E and the pipeline industry. These two remedies proposed by the intervenors will provide a meaningful step forward to effectuate change.

II. THE POD ERRONEOUSLY AND UNLAWFULLY REJECTS INTERVENORS' REQUEST FOR AN INDEPENDENT MONITOR.

A. The POD Ignores Intervenors' Evidence on What an Intervenor Would do and How the Process Would Work.

The POD rejects the Independent Monitor proposed by San Bruno, Division of Ratepayer Advocates ("DRA"), The Utility Reform Network ("TURN"), and the City and County of San Francisco ("CCSF"). In so doing, the POD erroneously concludes the intervenors failed to show

[1] POD at 166-167.

its effectiveness, or how a third party Independent Monitor would work.[2] This conclusion ignores the evidence submitted. On the contrary, intervenors proffered substantial evidence for the Commission to consider to establish the proper framework for an effective Independent Monitor.

1. The Commission Should Not Reject Intervenors' Proposed Remedy of an Independent Monitor for the POD's Reasons of Vagueness.

The CPUC already oversees PG&E's compliance with the previously-ordered Pipeline Safety Enhancement Plan ("PSEP") Decision in R.11.02.019. The CPUC will also potentially oversee PG&E's compliance of the payment of $1.4 billion in fines and remedies, and over 75 detailed penalties as part of the orders to be issued here.[3] This is no easy task. San Bruno's briefs provided details of the benefits that would result from an independent, third party monitor to assist the Commission in its PG&E oversight.[4] Such a monitor would provide the Commission with the much needed expert assistance to work as fact gatherers, fact checkers, analyzers of PG&E data and PSEP reporting obligations, preparers of reports on its findings, and "flaggers" of potential safety concerns or violations in PG&E compliance.[5] San Bruno proposes a minimum annual reporting on monitor findings to the public, that service list in the Line 132 proceedings, and the Commission.

San Bruno's briefs indicate that the city requested an Independent Monitor with expertise in natural gas transmission and distribution, pipeline safety, and engineering and operations who can provide the breadth and depth of resources needed to both assist the Commission and to validate the Commission's performance of its regulatory responsibilities.[6] The tenure of such qualified Independent Monitor must extend for at least for the full duration of PSEP. The

[2] POD at 143.

[3] POD at 165-167, Exhibit E.

[4] San Bruno Opening Brief at 47-48.

[5] *Id.*

[6] San Bruno Opening Brief at 43-49, San Bruno Rebuttal Brief at 16-24.

Independent Monitor should be selected by the Commission, with the advice and consent of the intervenors, in an auxiliary proceeding to the Line 132 proceedings within three months following the conclusion of the Line 132 proceedings. The Independent Monitor should also report to the intervenors, the public, and the legislature on a regular basis concerning PG&E and Commission performance. Any "flagged" violations would be reported to Consumer Protection & Safety Division ("CPSD", now Safety & Enforcement Division, but continuing the POD's naming protocol) for further investigation.

DRA also submitted evidence for a workable Independent Monitor program.[7] It recommended that the parties meet and confer and provide joint comments on the Independent Monitor process, including the hiring process, payment protocol, its duties and obligations, its reporting needs, and protocol for potential PG&E non-compliance or safety threats.[8] These recommendations provided the Commission with a workable framework and an effective process. The POD chose to ignore pages of evidence and arguments within the intervenors' briefs and erroneously claims that the Commission received no information on a workable program.

This Commission has freely acknowledged that the public, which it serves and is constitutionally obligated to protect, has lost faith in the competency and objectivity of the Commission as a regulatory of investor-owned utilities. Commissioner Florio admitted in the Maximum Allowable Operating Pressure (MAOP) errata proceedings that the Commission suffers from a public confidence problem:

> "There is certainly an enormous public confidence problem so, you know, that makes it our [the CPUC's] problem. ...[W]e find ourselves today with a public that doesn't believe you [PG&E] and in many respects doesn't believe us. So we've got a big problem that we've got to figure out how to turn around here. And all I can think of is that I think back to Watergate where somebody put in a two-bit burglary, brought down a president. I mean here, I don't think we even had a two-bit burglary. We had something discovered that was unexpected and

[7] ORA Opening Brief at 39-40.

[8] *Id.*

actions were taken.

> But you know, the engineering all happened the way it should but the public relations and the regulatory relations fell down somewhere. And I don't know how it happened or why it happened, but we've got a big job in front of all of us if we're going to restore the public confidence that both the company and this commission need to function effectively, and to have the public reach some level of calm and confidence about what's going on."[9]

Providing more money in the form of increased budgetary authorizations to CPSD does nothing to change public perception. Like it or not, an Independent Monitor having the audit and reporting functions described in the briefs will go far to restore public faith in this damaged institution.[10] Events of recent days make that argument even more compelling.[11]

2. San Bruno and DRA's Evidence of Effective Independent Monitors in Other Industrial Disasters Should not be Ignored, but Provide the Commission with Much-Needed Guidance.

San Bruno cited to, among other examples, *US v. BP Exploration & Production* as an instructive case to provide the Commission with guidance.[12] After the BP 2010 oil spill disaster in the Gulf of Mexico, the district court for the U.S. District Court's Eastern District of Louisiana ordered BP to retain a process safety and risk management monitor to oversee BP's process safety, risk management, and drilling equipment maintenance with respect to deepwater drilling in the Gulf of Mexico.[13] Specifically, the BP order stated:

> "The defendant shall retain, subject to approval by the Assistant Attorney General, Criminal Division, Department of Justice ("DOJ"), or his/her designee, a process safety monitor who shall be experienced in process safety and risk management and familiar with complex industrial operations such as deepwater oil and gas drilling (hereinafter the "Process Safety Monitor"). The Process Safety Monitor's duties will be to review,

[9] December 2, 2013 oral argument hearing transcript at p. 3026-3028 in R.11-02-019. *See accompanying request for official notice.*

[10] San Bruno Opening Brief at 48-48, San Bruno Rebuttal Brief at 21.

[11] See PG&E's September 15, 2014 Notice of Improper Ex Parte Communications filing in A.13-12-012 and I.14-06-016.

[12] San Bruno Opening Brief at 48, San Bruno Rebuttal Brief at 16.

[13] Order filed January 29, 2013, Document No. 66-3 in *United States of America v. BP Exploration & Production, Inc.,* Unites States District Court for the Eastern District of Louisiana, Case No. 12-292-cr-00292-SSV-DEK. The Order also required BP to retain an ethics monitor to improve BP's code of conduct for the purpose of ensuring BP's future candor with government officials. The Order further included a third party auditor to ensure BP's compliance with other remedies.

> evaluate and provide recommendations for the improvement of defendant's process safety and risk management procedures, including, but not limited to, the defendant's major accident/hazard risk review of drilling-related process safety barriers and mitigations, for the purpose of preventing future harm to persons, property and the environment resulting from the deepwater drilling in the Gulf of Mexico by the defendant and its Affiliates."[14] (Emphasis added.)

The BP order included a section on "Powers of the Monitors," defining the monitors' scope:

> "Each monitor shall have the authority to take such reasonable steps, as in the monitor's view, may be necessary to be fully informed with respect to the monitor's duties."[15]
>
> "The defendant, [BP] and Affiliates shall cooperate fully with the monitors to allow each monitor to fulfill his or her respective duties under this Order, including providing each monitor with access to all information, documents, records, facilities and/or employees, as reasonably requested by the monitor."[16]

This order, as well as the other Independent Monitor orders cited by San Bruno and DRA, provide the Commission with sufficient details on a workable framework for an Independent Monitor program. San Bruno asks that the Commission disregard the erroneous conclusions of the POD.

San Bruno anticipates and can appreciate that PG&E may object to an Independent Monitor due to its required inspection of sensitive and confidential data. A carefully-worded Independent Monitor remedy, as in the BP case, would address these concerns:

> "Each monitor shall maintain as confidential all non-public information, documents and records it receives from the defendant, subject to the monitor's reporting requirements herein. Each monitor shall take appropriate steps to ensure that any of his/her consultants or employees shall also maintain the confidentiality of all such non-public information.
>
> Should any monitor, or staff assisting any monitor in fulfilling his or her responsibilities, be provided materials ("Subject Materials") that may be protected by the attorney-client privilege or work product doctrine (or any other legally cognizable privilege or protection), the following conditions shall apply:
>
> i) Any provision of Subject Materials to a monitor pursuant to this order will not constitute a waiver of any applicable privilege.
>
> ii) In the event the monitors or DOJ seeks disclosure of Subject Materials for any reasons, the monitor shall provide the defendant with timely notice of its intention to do so.

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[14] *Id.* at 1-2.

[15] *Id.* at 4.

[16] *Id.*

iii) Each monitor shall return all Subject Materials to defendant, [BP] and Affiliates upon the date the respective monitor is finished using the Subject Materials for the purpose of fulfilling his or her responsibilities."[17]

3. The POD Commits Legal Error by Assuming Cases Cited by San Bruno and DRA Have no Value Here Because the Independent Monitor was Ordered by Consent Decree Over Entities Not Subject to the Same Regulations.

The POD disregards intervenors' citations to orders of Independent Monitors in other jurisdictions, because the orders were by a consent decree. The POD apparently reasons that the consent decree orders concerning British Petroleum, Shell Oil, El Paso Natural Gas, etc. are not instructive because the parties agreed to the remedy whereas PG&E has not. No legal authority or evidence was cited to support this conclusion. San Bruno fails to find the logic in a position that the Commission cannot learn from the United States Attorney General and federal courts concerning complicated safety issues raised in those proceedings. The Commission has never overseen a proceeding like this because of its complexity and extensive remedies. It is only logical to seek guidance from analogous situations concerning similar loss of life and tragic industrial disasters. It is not reasonable for the Commission to distinguish this guidance without comment in its ultimate decision on the basis that the offending party agreed to the penalty.

San Bruno speculates that the POD's disregard of evidence of similar remedies from other jurisdictions may be based on the Commission's Rule 12.5. This Rule states that settlements have no precedential value.[18] If this is indeed the POD's rationale, it misinterprets intervenors' reasons to proffer the evidence. San Bruno does not suggest the Commission is *legally bound* to follow an order issued against BP by the U.S. District Court for the Eastern District of Louisiana, or any other consent decree cited. These orders *do* however provide persuasive guidance and instruction. They should not be disregarded without explanation simply because they do not constitute binding precedent.

[17] *Id* at 4-5.

[18] Rule 12.5; *accord*, San Bruno Root Cause Presiding Officer's Decision at 32.

The POD also unlawfully concludes it can disregard other jurisdictions' fines and penalties in response to energy industry disasters because any party subject to an Independent Monitor "was not subject to comprehensive regulatory oversight such as this Commission exercises."[19] Once again, the POD fails to cite any legal authority or evidence to support this conclusion. Not only does this conclusion lack citation, it lacks logic. One cannot reasonably conclude that British Petroleum, El Paso Natural Gas Co., Shell Oil, and the construction of the Bay Bridge[20] are not subject to comprehensive oversight similar to this Commission.[21] For example, British Petroleum is subject to extensive regulation of its deep-sea oil rigs that caused the massive oil spill in the Gulf of Mexico in 2010.[22] Despite BP's regulatory obligations, the company is now subject to a comprehensive Independent Monitor program. The POD somehow concludes that BP's oil drilling operations are not subject to the same oversight this Commission exercises over PG&E – there are lives and issues of general public safety at stake in drilling operations. The Commission must disregard the POD's misapplication of the law; it is appropriate and necessary to seek guidance from other penalties provided in similar disasters across the county.

B. The POD Commits Legal Error by Placing a Higher Burden of Proof Upon Intervenors.

The POD concludes that the parties failed to provide adequate information regarding the effectiveness or costs of an Independent Monitor system.[23] This conclusion unlawfully places a higher burden on intervenors to require that these parties *prove* the effectiveness of their proposed remedy and associated costs, in addition to ignoring the evidence submitted by the

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[19] POD at 143.

[20] San Bruno Opening Brief at 48, DRA Opening Brief at 38-39.

[21] *See, e.g.,* Washington Utilities and Transportation Commission.

[22] British Petroleum is subject in part to regulation by the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEM"), the regulatory agency responsible for managing offshore drilling. For a discussion on BOEM's substantial oversight over BP, see http://www.boem.gov/Deepwater-Reading-Room/.

[23] POD at 144.

intervenors, as discussed above. No such burden was placed upon CPSD. CPSD's briefs never proffered evidence of the effectiveness of its request to retain auditors.[24] The evidence reflects the opposite; CPSD has a documented history of its *ineffective* ability to conduct audits.[25] Regardless, the POD adopted CPSD's recommendation in full and gave it $30 million of PG&E's money to do it. The POD also placed no such requirement that CPSD prove the amount of costs required to fund a PG&E audit and CPSD made no such showing.[26]

As an intervenor, San Bruno has the same rights as other parties in these proceedings. Intervenors are recognized as parties in CPUC proceedings without any stated limitation.[27] The applicable scoping memos encouraged intervenor participation. The Commission's own Rules encourage participation by providing compensation for intervenors for their "substantial contributions" to commission decisions in "all formal proceedings." [28] CCSF's Opening Brief further cites several Commission decisions regarding intervenor rights before the CPUC, which make clear that remedies proposed by intervenors should be considered with equal weight as CPSD proposals.[29]

Code of Civil Procedure Section 387 and interpreting case law provide persuasive guidance on the role of intervenors before the Commission. Third parties may intervene in actions in which they have a real interest in the outcome of the litigation.[30] This statute is broadly construed in favor of intervention.[31] The status of intervenor does not reduce the independence of its claims.[32] In sum, San Bruno is unable to find California precedent to support

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[24] CPSD Opening Brief at 58, CPSD Reply Brief at 4, 7-8, Appendix B at 1, 4.A.1.

[25] See IRP Report at 94-95.

[26] POD at 86, *see, e.g.,* CPSD Opening Brief at 58, CPSD Reply Brief at 4, 7-8, Appendix B at 1, 4.A.1.

[27] *PG&E Corp. v. PUC* (2004) 118 Cal.App.4th 1174, 1192.

[28] Pub. Util. Code § 1801.3; Rules 17.1-17.4.

[29] CCSF Opening Brief at 9-11.

[30] Code Civ. Proc. § 387.

[31] *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1505.

[32] *Deutchmann v. Sears Roebuck & Co.* (1982) 132 Cal.App.3d 912, 915 [" 'An intervenor becomes an actual party to the suit by virtue of the order authorizing him to intervene.' " (citations omitted)].

the POD's inference that intervenors are an inferior party before this Commission. The POD commits legal error by requiring a higher burden of proof upon San Bruno and its fellow intervenors to justify their proposed remedies.

C. The Fact that More Work or Outside-the-Box Thinking is Required is not a Valid Reason to Reject Intervenors' Request for an Independent Monitor.

The POD rejects the parties' request for an Independent Monitor because the program may require additional proceedings.[33] It appears the POD shies away from the proposed penalty because it does not neatly close the book on the proceedings; *i.e.,* this remedy will be ongoing in its enforcement.[34] This holding commits legal error, because, once again, it holds the intervenors to a higher burden of proof than CPSD. The POD did not reject CPSD's request for independent auditors and experts, even though the POD's own orders show such oversight will require further proceedings.[35] Almost all of CPSD's proposed remedies will require future Commission action to ensure compliance.[36] There is no requirement in the Commission's Rules or prior precedent that San Bruno must show its proposed remedy will resolve itself "without further consideration."[37]

San Bruno applauds the four collective POD's bold findings. In order to make sure the decisions are worth more than the paper they are printed on, further work is required. The Commission and the parties in these proceedings must do more in order ensure the orders are carried out. The Commission cannot merely issue its decision, close its files, assume its work is done and that PG&E will do what it is told. History tells us otherwise. An Independent Monitor would provide that assurance, even though the establishment of such a program will take some effort on the part of the parties and the CPUC. No one said that these Line 132 proceedings

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[33] POD at 143.

[34] *Id.* "Further, no party has provided adequate information that would allow us to adopt an Independent Monitor program without further consideration. DRA acknowledges this by proposing further proceedings[.]"

[35] *Id.* at 166-167.

[36] *See generally, id.* at Exhibit E.

[37] *Id.* at 143.

would be easy.

D. An Independent Monitor Would Not Unlawfully Delegate the Commission's Jurisdiction.

The POD states that the intervenors' Independent Monitor proposal would unlawfully delegate the Commission's safety jurisdiction to a third party.[38] This conclusion erroneously ignores Public Utilities Code Section 797, which authorizes this Commission to utilize the services of an independent auditor, so long as it is selected and supervised by the Commission. The Commission has exercised its authority to implement such an independent auditor/monitor on numerous occasions. San Bruno cited the Commission's prior decisions (not settlements) ordering the implementation of Independent Monitors in other proceedings,[39] but the POD erroneously disregarded this evidence. The Commission has ordered independent auditors on numerous occasions in the past under Section 797 without an unlawful delegation of its powers. The fact that intervenors use a different term to distinguish its proposal (monitor vs. auditor) does not establish a remedy that unlawfully delegates Commission powers.

The POD misunderstood the intervenors' request. To be clear: San Bruno does not seek to have an Independent Monitor to usurp the powers of the Commission. The Independent Monitor would not issue orders, it would not hold hearings, it would not diminish the CPSD's role in safety investigations. It would be a fact checker. It would flag discrepancies. It would have the expertise. It would help ascertain PG&E compliance with the hundreds of obligations placed upon the company through this decision and the PSEP Decision. It would raise the red flag to let the Commission know that a "potential" violation may have occurred (it would ultimately be the Commission's decision to determine if an actual violation occurred). The monitor would provide the independence and transparency necessary to help PG&E reach its goal touted on its website: to run the safest pipeline system in the nation.[40]

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[38] POD at 142.

[39] San Bruno Rebuttal Brief to Amended CPSD Reply Brief at 8, citing D.02-10-006, D.03-12-062, and D.07-11-045 as decisions in which the Commission ordered independent auditors as part of compliance.

[40] http://www.pge.com/en/safety/systemworks/gas/pipelinesafety/index.page.

An Independent Monitor does not take the place of the CPUC. By way of example, the order against BP noted that the Independent Monitor's report must include proposed recommendations.[41] BP could voluntarily adopt the recommendations, meet and confer with monitor staff regarding disputed recommendations, or provide alternative proposals. In the event that BP and the monitor are unable to agree, BP shall consult with the DOJ to resolve the dispute.[42] "Pending such determination, the defendant shall not be required to adopt any contested recommendation(s)."[43] As with intervenors' proposal, an Independent Monitor would likewise have no executive power, but only the power to recommend. It would provide transparency and reassure a skeptical public. These things have been lacking and are sorely needed here.

E. The POD Ignores Decades of the Commission's Failure to Adequately Oversee PG&E's Compliance With Safety Regulations.

The POD reasons that the "more appropriate course" would be to provide CPSD with more resources to properly oversee PG&E compliance with the remedies and PSEP implementation and thus rejected the Independent Monitor proposal.[44] The POD ordered PG&E to reimburse the division up to $30 million to fund auditors and experts to oversee PG&E compliance.[45] This remedy just throws money at an institutional problem in hopes it will go away. This penalty decision is erroneous because it fails to address: 1) the intervenors' underlying reasons for the implementation of an Independent Monitor; 2) the evidence of CPSD's inability to handle such a massive undertaking; and 3) the fact that CPSD would report to the very institution that has been criticized for its lax oversight.

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[41] BP Order at 6.

[42] *Id.*

[43] *Id.* at 6-7.

[44] POD at 143.

[45] POD at 86, 143-144, 166-167.

The POD admits that the evidence shows: "the Commission, including CPSD, did not meet all reasonable expectations for its oversight of PG&E's gas transmission safety."[46] In an about-face, the POD's next sentence ignores this admission and boldly asserts (without citation) that evidence of CPSD's past shortcomings do not show it "is stuck in the culture of the past." [47] The opposite conclusion is just as likely. The CPUC and the CPSD continue to struggle with mismanagement and an inability to effectively implement programs needed to reform the organization, as the August 2013 Subcommittee Report of the Senate Committee on Energy, Utilities, and Communication ("Subcommittee Report") explained.[48] This struggle has continued up to the date of the Subcommittee Report, three years after the San Bruno disaster.

San Bruno reasoned in its brief that an Independent Monitor is required for four reasons:

1) the Commission has shown it cannot be an effective watchdog;

2) the Commission does not have adequate resources to oversee PG&E compliance;

3) the auditor proposed by CPSD does not assure independence; and

4) PG&E's failure to admit faults shows the need for an Independent Monitor. [49]

The POD's remedy only addresses one of the four stated reasons by providing the CPSD with adequate resources. Erroneously, and alarmingly, the POD ignores concerns voiced by San Bruno, as well as the National Transportation Safety Board ("NTSB") and the Commission's own implemented Independent Review Panel ("IRP").

San Bruno has repeatedly urged that the public needs the CPUC, and in particular the CPSD, to serve as an effective watchdog. San Bruno does not shout in a vacuum. The NTSB Report determined that the CPUC's oversight failures were a contributing factor to the San Bruno disaster.[50] Its conclusions were based on its findings that the CPUC failed to uncover

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[46] POD at 142.

[47] *Id.*

[48] "Slow Progress Toward Safety: Improving Performance and Priorities in the Safety Plans at the CPUC" at p. 5.

[49] San Bruno's Rebuttal Brief at 16.

[50] NTSB Report at 127.

pervasive and long-standing problems within PG&E. "[I]neffective enforcement of the [Commission] permitted PG&E's organization failures to continue over many years."[51]

Likewise, the IRP Report concluded that CPSD staff lacked technical skills, necessary expertise, integrity management training, knowledge of information systems, and sophisticated analytical tools to properly regulate PG&E and other public utilities.[52] The IRP Report further stated that the CPSD suffered from an inability to "ask the right questions" and manage and analyze trend data.[53] "[W]ith the current staffing and recruiting issues, absent some major initiative, there is little evidence the focus on pipeline integrity audits will increase and improve."[54] (Emphasis added.) The Report determined that the Commission and PG&E "must confront and change elements of their respective cultures to assure the citizens of California that public safety is the foremost priority."[55]

More alarmingly, the IRP Report concluded CPSD's audit abilities were incomplete and inconsistent.[56] For example, when it comes to investigating pipeline systems in the field, CPSD curiously spends more time inspecting mobile home parks than it does inspecting transmission pipeline systems.[57] CPSD's performance of audits were merely reactive, "tabletop exercises to assure compliance against a PHMSA checklist[,]" as stated in the IRP Report. The Report acknowledged a lack of historical data to properly forms its conclusions, because of the "relative inexperience of the [CPSD] staff in performing these audits and because there have been so few audits completed[.]"[58] (Emphasis added.) Of the completed audits IRP could analyze, CPSD maintained no database or explanation of critical data needed to be included for purposes of an

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[51] *Id.* at 122-123.

[52] *Id.*

[53] IRP Report at 88-91.

[54] *Id.* at 91.

[55] *Id.* at 6-7.

[56] IRP Report at 91-95.

[57] *Id.* at 92.

[58] *Id.* at 94-95.

audit to properly analyze the performance of operators like PG&E.[59]

The Subcommittee Report also concluded that the CPUC does not know how to effectively use audits to improve safety. For example, the CPUC provides no clear guidance regarding follow-up when an audit uncovers violations.[60] There is no protocol established for when a utility disagrees with an audit's findings.[61]

There is no historical evidence that this time, the audit process will be successful. The POD ignores these numerous findings and admitted-"organizational issues." [62] Instead, the POD throws money at the same institution that was complicit in the problem in the first place. An old clunker with a broken engine and no tires will not become Formula One worthy simply by paying for an expensive new paint job and placing a canary yellow and black prancing horse logo on its hood. Thirty million dollars will likely assist the CPSD in its limited resources problem, but it does not solve its documented mismanagement, lack of expertise and technical savvy, and historical inability to conduct meaningful audits. The Commission and the CPSD need systematic, agency-wide change *before* being tasked with overseeing PG&E's compliance with both PSEP and the remedies. San Bruno urges the Commission to rethink this remedy and opt for a new approach through the intervenors' Independent Monitor proposal.

F. The Need for Independence and Transparency is not Addressed in the POD.

The POD erroneously fails to address San Bruno's principal reasons why a third party, Independent Monitor is required here: independence and transparency. The current proposed POD plan of an expensive CPSD-appointed auditor does not provide any assurances of public access. The POD-proposed plan has no means for which the public can access information regarding the auditor's findings of PG&E compliance, prohibiting much needed transparency in the process. The public has no reason to believe that the CPSD auditor proposal will be anything

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[59] *Id.*

[60] Subcommittee Report at 22.

[61] *Id.*

[62] POD at 143.

more than the status quo, business-as-usual attitude for the Commission and PG&E.

On the other hand, intervenors' proposed remedy provides that the Independent Monitor's actions and reporting would be available for public review.[63] The Independent Monitor's findings and reports would be publically available and served upon all parties to the Line 132 proceedings. San Bruno asks that this Commission address San Bruno's concerns of the need for public access and transparency in the process to ensure that PG&E complies regarding the fines and penalties in the ultimate decision ordered in these proceedings.

G. San Bruno's Request for a Financial Independent Monitor Went Ignored.

The POD erroneously ignores San Bruno's request that the fines and penalties require a *financial* Independent Monitor to ensure PG&E complies with the monetary requirements of the decision.[64] San Bruno's briefs explained the necessity of a financial Independent Monitor to oversee PG&E's expenditures and follow each dollar the Commission directs PG&E shareholders to spend.[65] This remedy is particularly important given PG&E's documented history of diverting money earmarked for safety into the line of pockets of shareholders and senior management.[66] The POD has made it clear that shareholder, not ratepayer, dollars must pay for these fines and penalties. The POD also makes clear that money spent in compliance with this decision must be after-tax spending.[67] Given PG&E's track record and the high stakes of these proceedings, the Commission is urged to order the appointment of a financial monitor to ensure PG&E complies with the financial obligations of both this order and the PSEP Decision.

Under the terms of the POD, an Independent Monitor is needed to ensure that (1) PG&E immediately remits a $900 million fine into the California General Fund; (2) PG&E only draws on shareholder dollars to cover imprudent PSEP expenditures; (3) only draws on shareholder

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[63] San Bruno Opening Brief at 48-49, San Bruno Rebuttal Brief at 20-21.

[64] San Bruno Opening Brief at 48, San Bruno Rebuttal Brief at 21-23, San Bruno Rebuttal Brief to CPSD Amended Reply at 7.

[65] San Bruno Rebuttal Brief at 23.

[66] *Id.*

[67] *Id.*

dollars to cover the ratepayer expenses previously approved under Decision 12-12-030 for PSEP; (4) expenditures of PG&E shareholder dollars to fund PSEP in its entirety only support prudent expenditures and does not drive PG&E to cut corners, limit expenditures, or otherwise jeopardize safety; (5) PG&E adequately account for and verify all money spent on penalties; (6) PG&E does not artificially inflate revenue requests in other departments across its electric and natural gas rate cases in order to compensate for the utility's losses in the Line 132 Proceedings; and (7) PG&E complies with over seventy complex Commission remedies set forth in the POD. [68]

H. If the Commission is Inclined to Adopt the POD's CPSD-Appointed Auditor Plan, it Must Provide a Clear Directive to Avoid Past Auditing Pitfalls.

If the Commission is inclined to adopt the POD's plan for a CPSD-appointed auditor (San Bruno believes its arguments above show that the Commission should adopt its proposal instead), then San Bruno asks that the final order address the parties' expressed concerns to ensure that the CPSD auditor plan works. The plan must have teeth. It must ensure that PG&E complies with the 75-plus remedies and fines. The plan must make sure the PSEP requirements get done. Money alone does not fix the problem.

The POD directs the CPSD to present to the Commission within 60 days a proposal and time frame on the subject audits.[69] However, the POD provides no guidance or requirements on how CPSD will conduct these audits. There is no requirement on how the auditors will report to the Commission, the extent of the auditor's duties, the public's opportunity to view any reports (if any are required, no such order was provided), the frequency or timing of such reporting, or the required analysis and subject matters of the audits. [70]

The POD states that PG&E shall reimburse CPSD for expenses related to the auditor plan for up to $30 million, and can ask for more if they want.[71] This remedy provides no oversight or assurances on how the money will be spent to guarantee it is spent directly on auditor-related

[68] *See* San Bruno Rebuttal Brief at 21-23; Appendix E of POD.

[69] POD at 144.

[70] POD Exhibit E.

[71] POD at 144.

expenses to oversee PG&E compliance. So much money, so few strings attached. When there are millions of dollars of other people's money for the taking, with little to no instruction on how it is to be spent, then corruption, mismanagement, and bureaucratic waste will inevitably arrive at the CPUC doorstep. San Bruno fears this money will be quickly spent in an ineffective program unless the Commission provides the necessary clear rules on spending.

In sum, the POD provides instruction to neither CPSD nor PG&E regarding the auditing process. This omission has the potential to result in mismanagement of funds, mismanagement of the audit process, and corruption. This omission has the potential to make these entire proceedings meaningless. It is crucial: the auditing process will make sure PG&E complies with the order. The Commission and the parties worked hard to obtain a just and *enforceable* decision. Let's make our hard work mean something. San Bruno urges that the Commission provide further details and obligations for an effective and money-wise CPSD audit, including the mandated duties of CPSD in the program's oversight and management.

The parties and the public at large want to see that PG&E actually complies with the fines and remedies and real change results.[72] The POD provides no means for public access to PG&E's progress or the findings of the CPSD auditor. San Bruno thus asks that the Commission provide greater public access and transparency to the audit program, should the Commission adopt this plan in its order. As a starting point, the decision should invite intervenors to participate with CPSD in the formation of the audit program to present within 60 days of the order. The Commission should also offer intervenors the opportunity to comment on the proposed auditors. These opportunities will hopefully provide intervenors the means to incorporate their voice for independence and transparency into the process.

III. THE POD COMMITS LEGAL AND FACTUAL ERROR BY REJECTING SAN BRUNO'S REQUEST FOR A PIPELINE SAFETY TRUST.

The POD commits legal and factual error by failing to address San Bruno's arguments

[72] San Bruno and ORA's arguments for an Independent Monitor may provide the Commission guidance with its order for a clear and effective plan for independent auditors and experts. *See* San Bruno Opening Brief at 43-49, San Bruno Rebuttal Brief at 16-24, ORA Opening Brief at 36-40, ORA Rebuttal Brief at 19.

warranting the need for a Pipeline Safety Trust, even though the POD admits that such a trust would provide a community voice for safety issues currently lacking in CPUC proceedings.

A. The POD Unlawfully Places a Higher Burden on San Bruno and Ignores its Reasons for a Pipeline Safety Trust.

The POD erroneously denies the need for a proposed Pipeline Safety Trust because the organizational specifics and technicalities of the trust were not expressed.[73] Once again, this conclusion holds San Bruno to a higher standard and higher burden of proof, though San Bruno stands on equal footing with CPSD. For example, CPSD argued for an increase in PG&E duties for the Aerial Patrol Program Manager to include oversight and review of the quality and accuracy of patrol reports.[74] The POD adopted this proposal in full, despite the fact that CPSD's brief lacked language on the specifics as to how to deliver better quality and accuracy in patrol reports. Discussion of how the Aerial Patrol Program Manager's roles would be organized was not discussed by CPSD.[75] The POD requires San Bruno to provide details of its proposed penalties, while CPSD need not.

Despite being held to a higher standard, San Bruno provides ample information on Pipeline Safety Trust specifics. The POD erroneously states that San Bruno has provided no specifics on how the Pipeline Safety Trust would be organized or why it needs to be funded by PG&E.[76] San Bruno identified variables such as time and expenses, which are clear indicators of "specifics." To illustrate, San Bruno proposed that the Pipeline Safety Trust should operate for a period of time of no less than 20 years, and PG&E should provide an endowment of $5 million per year to support the Pipeline Safety Trust's advocacy work.[77] San Bruno even goes so far as to recommend alternate and supplemental sources of funds for PG&E by advocating PG&E be allowed to seek contribution from other regulated pipeline operators to fund the

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[73] POD at 139.

[74] CPSD Opening Brief at 68.

[75] POD at 132.

[76] POD at 139.

[77] San Bruno Opening Brief at 41.

California Pipeline Safety Trust.[78] The POD completely disregards this proposition when it lists that it does not find it "appropriate to require PG&E shareholders to fund this work."[79] The POD's conclusion that San Bruno provided no specifics is thus inaccurate.

Additionally, San Bruno provided ample evidence and arguments on the importance of implementing a Pipeline Safety Trust. A Pipeline Safety Trust is necessary to: 1) establish a long-term partnership with local communities, government, and industry within California to improve and enhance pipeline safety; 2) increase accountability for safety of intrastate pipelines through enhanced public participation, independent oversight of state and federal regulators, and transparency; and 3) increase public pipeline safety awareness and confidence in the pipeline systems within California.[80] San Bruno further cited to the National Pipeline Safety Trust as a model it would strive to follow, stating its successes will provide insight into how the Pipeline Safety Trust could operate.[81] The POD is silent with respect to these issues and fails to address them.

The Commission should not reject this proposal simply because every element of independent thinking on its implementation has not been detailed and exhausted. San Bruno has provided sufficient information on the Pipeline Safety Trust's organization and technicalities to warrant greater discussion by the POD.

B. A Pipeline Safety Trust's Future Status as an Intervenor Before this Commission is not Cause to Reject this Remedy.

San Bruno cannot – and should not – be involved in every CPUC proceeding to sound the gong when pipeline safety and public safety issues arise. The POD admits: "[San Bruno] correctly points out that there is no safety/advocacy counterpart to CPSD."[82] In CPUC proceedings, there exists no voice to express safety concerns, whereas DRA and TURN. for

[78] San Bruno Opening Brief at 42.

[79] POD at 139.

[80] San Bruno Opening Brief at 43.

[81] San Bruno Opening Brief at 42.

[82] POD at 139.

example, provide a voice for ratepayers. The California Pipeline Safety Trust would serve as the counterpart to CPSD as TURN does to ORA. An independent, credible organization is necessary to express the concerns of and advocate for the public to complement CPSD's work with respect to pipeline safety issues. Thus, a Pipeline Safety Trust could provide a unique voice (and a much needed broader voice than San Bruno's) for safety concerns not currently provided in CPUC proceedings, as the POD acknowledges.

Despite this admission, the POD rationalizes its rejection of San Bruno's remedy because the Pipeline Safety Trust would be subject to the requirements of an intervenor.[83] An organizational hurdle to become an intervenor in proceedings subject to requirements pursuant to Public Utilities Code Section 1801 *et seq.* is not a legal basis for the POD's rejection of the Pipeline Safety Trust. The trust would be subject to the requirements of an intervenor, but that does not support a conclusion that its creation must be rejected. Intervenor status does not preclude the ability of a pipeline trust to exist.

C. The POD Erroneously Concludes that no Community Support Exists for a Pipeline Safety Trust.

The POD commits factual and legal error by disregarding the need for a Pipeline Safety Trust based on the blank statement that there is no community support for such an organization.[84] This assertion is baseless and once again places a higher burden of proof on San Bruno with respect to remedies. Frankly, San Bruno did not think it necessary to argue that community support exists for an independent, community-based Pipeline Safety Trust advocating public safety before the CPUC. It is judicially-noticeable "common knowledge." Just open any newspaper in California and one can read numerous articles about the scandals of PG&E and the CPUC and the low level of priority safety ranks within these two entities. Turn the page to the editorial section and one can read letters to the editor expressing frustration and dismay at the status quo: "Have they not learned anything in the four years after San Bruno?" Walk into any

[83] POD at 139.

[84] POD at 139.

bar or social setting and bring up the topic of the CPUC and PG&E's cozy relationship in deteriorating pipeline safety and you will find your answer. San Bruno does not need to prove public support for pipeline safety. The proof is everywhere.

Senator Hill's introduction of legislation advocating for the need for an Independent Monitor and Pipeline Safety Trust demonstrates that community support exists for the foundation of a Pipeline Safety Trust. Such a bill could not possibly bear any fruit without the seed of community support. If that were the case, Senator Hill would not be advocating fervently and planning to introduce such a bill to the legislature on December 1 when the Legislature convenes.

Pipeline Safety Trusts around the country have been proven to be a product of community support. After the 1989 Exxon Valdez oil spill, a citizen oversight organization in Alaska advocated for and successfully changed oil tanker safety practices. Additionally, in the aftermath of the Olympic Pipeline Tragedy in Bellingham, Washington in 1999, a similar entity to the advocated-for Pipeline Safety Trust was created as the result of written support from the Washington Governor, the Washington State Utilities and Transportation Commission, organizations, local governments, and pipeline safety advocates worldwide.[85] Merely because citizens are not knocking on the door of the Commission does not preclude the idea that community support is ever-present. As evidenced by Bellingham, the establishment of the Pipeline Safety Trust resulted from a coordinated and cooperative effort by the state public utilities commission and local government, an important precedent to follow.

IV. CONCLUSION

The blind cannot lead the blind. No matter how much of PG&E's money is thrown at the problem, it will not go away unless CPSD and the Commission fix their broken regulatory oversight. This Commission has not shown that its oversight of PG&E has changed since the San Bruno disaster. Indeed, the recent revelations of the exchange of improper *ex parte* email exchanges between PG&E and Commission staff and Commissioners in PG&E's Ratemaking

[85] San Bruno Opening Brief at 42.

case[86] show the business-as-usual, lax attitude is alive and well in the CPUC corridors. Given this well-documented, cozy relationship between regulator and regulatee, San Bruno doubts that the proposed POD-ordered auditors will provide any serious change or meaningful contribution to promote safety at PG&E and the CPUC. This is the cookie-cutter definition of insanity: do the same thing over and over again in hopes you will get a different result.

An Independent Monitor of the process as proposed by the intervenors would be different. The process to establish an Independent Monitor may take additional proceedings, it may require further involvement by the Commission and the parties, but isn't it worth it? Don't we want protocol in place to make sure the dozens of penalties are actually enforced?

Additionally, a Pipeline Safety Trust would enhance the public participation needed in future proceedings and provide a strong voice for safety issues concerning California's energy industry. San Bruno has tried to be a voice for the public's safety needs in these proceedings, but the city's constituency is small and its role in future proceedings would be limited or improper. It is not the city's place to be a ubiquitous voice for public safety in CPUC proceedings. A Pipeline Safety Trust would provide that voice for the future.

The POD erroneously rejected these two proposed penalties. San Bruno respectfully requests that the Commission adopt them in its ultimate order against PG&E.

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Respectfully Submitted,

/s/ Steven R. Meyers

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[86] See PG&E's September 15, 2014 Notice of Improper Ex Parte Communications filing in A.13-12-012 and I.14-06-016.