

143 FERC ¶ 61,005  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

CALifornians for Renewable Energy, Inc.,  
Michael E. Boyd  
Robert M. Sarvey

Docket No. RP13-436-000

v.

Pacific Gas and Electric Company

ORDER DISMISSING COMPLAINT

(Issued April 1, 2013)

1. On January 3, 2013, CALifornians for Renewable Energy, Inc. (CARE), Michael E. Boyd, and Robert M. Sarvey, individually (collectively, complainants) filed a complaint, claiming reliance on certain sections of the Natural Gas Act,<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure,<sup>2</sup> against Pacific Gas and Electric Company (PG&E) (respondent). The Complaint appears to allege, among other things, that PG&E has violated the terms and conditions of its blanket certificate through failure to meet requirements to maintain its natural gas system leading up to, and including, the events following the explosion of PG&E's pipeline facilities in San Bruno, California (San Bruno explosion).<sup>3</sup> Specifically, complainants request that the Commission conduct its own investigation of the events leading up to, during, and after the San Bruno explosion, and suspend or revoke PG&E's blanket certificate until such time PG&E demonstrates compliance with its terms.<sup>4</sup>

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<sup>1</sup> 15 USC 717-717z (NGA).

<sup>2</sup> 18 C.F.R. § 385.206 (2012).

<sup>3</sup> Complaint at 4.

<sup>4</sup> *Id.* at 7.

2. We dismiss the complaint. Complainants' filing fails to establish what conduct they believe violates the NGA. In addition to the complaint being incoherent and disjunctive, complainants have failed to provide factual support, as required by Rule 206 of the Commission's Rules of Practice and Procedure,<sup>5</sup> as opposed to unsubstantiated allegations, for the claims made in their complaint. Complainants have similarly failed to submit a pleading that meets the Commission's filing requirements contained in Rule 203.<sup>6</sup>

### **I. Complaint**

3. Complainants maintain that while the Pipeline and Hazardous Materials Safety Administration is primarily responsible for pipeline safety, the Commission has authority over natural gas companies' maintenance of pipelines via the company's blanket certificate.<sup>7</sup> Moreover, complainants opine that when the Commission authorizes a natural gas company to construct and operate pipeline facilities, that authority must necessarily include authority to maintain the facilities in accordance with federal safety standards.<sup>8</sup> Complainants, then advance the following four general arguments in support of their complaint, that: (1) PG&E, enabled by the California Public Utilities Commission (CPUC), has misappropriated ratepayers funded maintenance funding designated to maintain PG&E's pipeline program and pipeline replacements;<sup>9</sup> (2) the CPUC's and National Transportation Safety Board's (NTSB) investigation of the explosion are deficient;<sup>10</sup> (3) CARE's attempts to get to the "root cause" of the San Bruno explosion during the CPUC's review (CARE's Application 10-09-012), was thwarted by the Federal Communications Commission (FCC), NTSB and the CPUC;<sup>11</sup> and (4) PG&E's threat decision tree submitted in CPUC Rulemaking 11-02-019 as part of its Implementation Plan addressing the San Bruno explosion fails to assess external threats which may have been the reason for "an opaque investigation"<sup>12</sup> of the explosion.

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<sup>5</sup> 18 C.F.R. § 385.206 (2012).

<sup>6</sup> 18 C.F.R. § 385.203 (2012).

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.* at 14-16.

<sup>11</sup> *Id.* at 17-50.

<sup>12</sup> *Id.* at 50-51.

4. First, complainants cite to an argument raised by the California Division of Ratepayers Advocates in a matter before the CPUC to support their supposition that PG&E should not be allowed to recover through ratemaking any costs associated with an Implementation Plan to address the San Bruno explosion.<sup>13</sup> Next, complainants cut and paste certain excerpts from an Independent Review Panel’s report and from a NTSB report, and then state, “[b]ut neither CPUC; nor the NTSB; ever assessed external threats in PG&E integrity management program as identified in *CARE’s Motion to provide supplemental information to CARE’s Application 10-09-012 filed January 28, 2011 with CPUC.*”<sup>14</sup>

5. To support their third argument that their attempts to get the “root cause” of the explosion were thwarted, complainants put forth seven subpart arguments. To this end, complainants assert: (1) Mr. Boyd, CARE’s President of the Board of Directors, is qualified as a failure analysis engineer; (2) CARE participated in a proceeding pertaining to the deployment of smart meters in PG&E, and urged the CPUC to modify its decision in that matter and at the same time sought relief from the FCC which responded to CARE that the issue was not under its jurisdiction; (3) a former employee of a contractor for PG&E, Wellington Energy, disclosed that an arc flash event could have sparked the San Bruno fire; (4) that CARE attempted to supplement the record in the matter pertaining to the explosion with information supporting an arch flash event; (5) questions whether the NTSB investigator and the CPUC’s general counsel, both formerly employed by PG&E, have a financial conflict; (6) CARE included an excerpt of Mr. Boyd’s oral argument in the aforementioned proceeding as well as an excerpt of CARE’s motion to incorporate documents were pasted in this section; and (7) a senior director of PG&E’s smart meter program had admitted to infiltrating CARE’s online smart meter discussion groups in order to spy on the group’s activities and discredit their views and that PG&E senior management knew of this activity and the CPUC Staff aided and abetted the employee’s behavior. In support of this last argument, complainants note that PG&E found the senior director of PG&E’s smart meter program had violated a number of the company’s policies and then listed a number of California code provisions pertaining to the Public Utilities Code and constitutional and criminal laws that they believe this employee violated. Lastly, complainants cite to “section 4A of the NGA and section 222 of the... FPA” as being violated as a result of the employee’s actions.<sup>15</sup>

6. Complainants next argue that PG&E’s decision tree considers three factors – manufacturing threats, fabrication and construction threats, and corrosion and latent

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<sup>13</sup> *Id.* at 12-13.

<sup>14</sup> *Id.* at 14-17.

<sup>15</sup> *Id.* at 50.

mechanical damage threats. Because PG&E's decision tree does not include the three external risks that CARE identifies: (1) risk of arc flash ignition source induced from external wireless smart meters; (2) risk of intentional sabotage or terrorist attack; and (3) the risk of intentional use or employment of a device, scheme or artifice to defraud, CARE opines that the omission of these factors makes PG&E's decision tree purposefully opaque.<sup>16</sup> Further, complainants contend that PG&E and the CPUC have a motive to have an opaque outcome in the San Bruno explosion investigation -- PG&E's financial interest.<sup>17</sup>

7. Based on the aforementioned information and allegations, the complainants request the following relief from the Commission, to: (1) issue a notice of show cause as to why the Commission should not revoke PG&E's blanket certificate; (2) require PG&E to provide evidence of compliance or a schedule of compliance, including such records as proof of insurance, bonding, licensing for all PG&E's natural gas facilities currently operating and/or that were operating at the time of the San Bruno disaster; (3) direct Commission staff, in cooperation with the CPUC staff in the Division of Ratepayer Advocates, to develop a proposed PG&E natural gas Quality System including, among other things, external threats; (4) impose civil penalties against PG&E based on fraud and false statements at \$1,000,000 per day from September 9, 2010, to the date of this instant complaint or \$826,000,000 and to assess penalties against PG&E for the maximum penalties provided for by the NGA, 15 U.S. C. § 717(t); \$1,000,000 for willingly and knowingly violating 15 U.S.C. § 717f(h) and \$50,000 for each day during which PG&E knowingly and willing violated 18 C.F.R. § 157.203(d).<sup>18</sup> Further, complainants request the Commission grant any other relief it deems just and proper.

8. Finally, complainants list certain provisions of Rule 206, maintaining that certain "price and non-price terms and conditions" are unjust and unreasonable and need to be abrogated by Commission and that no pending proceedings provides an adequate opportunity for the Commission to address respondent's misconduct. Complainants also maintain that their attached exhibits are being submitted in support the complaint.<sup>19</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 51-52.

<sup>19</sup> *Id.* at 52-54.

## II. Notice of Filings, Motions to Intervene and Responsive Pleadings

9. Notice of CARE's, Mr. Boyd's and Mr. Sarvey's complaint in Docket No. RP13-436-000 was published in the *Federal Register*,<sup>20</sup> with interventions and protests due on or before January 23, 2013.

10. On January 23, 2013, PG&E filed its answer and Calpine Energy Services, L.P. filed a motion to intervene.

11. PG&E requests the Commission to dismiss the complaint. PG&E asserts that the Commission does not have jurisdiction over its "Hinshaw gas transmission pipeline, by virtue of Section 1(c) of the Natural Gas Act (15 U.S.C. § 717(c); ...CARE's complaint represents a collateral attack on the rulings of the...CPUC in various proceedings; and...CARE's complaint fails to meet the minimum requirements of Rules 203 and 206 of the Commission's Rules of Practice and Procedure."<sup>21</sup>

12. PG&E explains that the CPUC has initiated three investigations in light of the San Bruno explosion which address: (1) PG&E's gas transmission recordkeeping practices; (2) PG&E's class location designations under federal pipeline safety laws; and (3) whether PG&E violated any provision of the California Public Utilities Code or other requirements (including federal gas safety requirements).<sup>22</sup> PG&E notes that all three investigations are ongoing.

13. According to PG&E, "[t]he Hinshaw Amendment, Section 1(c) of the Natural Gas Act ( 15 U.S.C. § 717(c)) provides that intrastate rates and service are exempt from Commission scrutiny...[and] that the Amendment applies to any pipeline that receives interstate gas 'within or at the boundary of a state if all of the natural gas so received is ultimately consumed within such State,...provided that the rates and service of such...facilities be subject to regulation by a State commission."<sup>23</sup> Thus, PG&E opines that its intrastate gas transmission pipeline is exempt from the Commission's scrutiny.<sup>24</sup>

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<sup>20</sup> 78 Fed. Reg. 2391 (2013).

<sup>21</sup> PG&E Answer at 1.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* (citing *Altamont Gas Trans. Co. v. FERC*, 92 F.3d 1239, 1243 (D.C. Cir. 1996); *Pacific Gas and Electric Co.*, 67 FERC ¶ 61,355, at 62,240 (1994)).

14. PG&E also asserts that complainants' reliance on the Commission's regulations codified in 18 C.F.R. Part 157 and PG&E's limited blanket certificate as a basis for the Commission to confer jurisdiction over complainants' requested relief is misplaced.<sup>25</sup> PG&E maintains that it was granted a limited jurisdiction blanket certificate pursuant to section 284.224 of the Commission's regulations,<sup>26</sup> not under 18 C.F.R. Part 157, which pertains to interstate pipelines. PG&E asserts that when granting PG&E's limited blanket certificate under section 284.224, the Commission clearly held that PG&E would remain exempt from Commission jurisdiction.<sup>27</sup>

15. Further, PG&E contends that the complaint is an impermissible collateral attack on the CPUC's orders. PG&E notes that the NTSB has investigated the accident in San Bruno and the CPUC has three open investigations and one rulemaking in light of said explosion. PG&E believes that the complaint is an attempt by complainants to re-litigate issues that were already addressed in the NTSB investigation or are currently being considered in the CPUC's proceedings. Similarly, PG&E points out that the issue pertaining to the conduct of a former PG&E employee is the subject of a pending settlement among certain stakeholders which is awaiting the CPUC's approval. In light of the aforementioned, PG&E suggests that the complainants should not be permitted to make an "end-run around the CPUC's investigation."<sup>28</sup>

16. Finally, PG&E asserts that the complaint fails to meet the requirements of Rules 203 and 206 of the Commission's Rules of Practice and Procedure. In particular, PG&E contends that the complaint contains baseless, unsupported allegations and is comprised of pasting of unsupported claims made in other proceedings.<sup>29</sup> Moreover, PG&E opines that even if the Commission had jurisdiction to adjudicate the complaint, complainants' reliance on unsubstantiated allegations made in other forums is not sufficient to satisfy Rules 203 and 206.<sup>30</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> 18 C.F.R. § 284.224 (2012).

<sup>27</sup> PG&E Answer at 4 (citing *Pacific Gas and Electric Co.*, 67 FERC ¶ 61,355 (1994)).

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.* at 7.

### **III. Commission Determination**

#### **A. Procedural Matters**

17. Pursuant to Rule 102(c)(2) of the Commission's Rules of Practice and Procedure, the respondent is a party to this proceeding.<sup>31</sup> Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notice of intervention and the timely, unopposed motion to intervene serve to make the movant a party to this proceeding.<sup>32</sup>

#### **B. Substantive Matters**

18. The Commission's Rules of Practice and Procedure requires a complaint to meet certain minimum requirements. Specifically, in pertinent part, Rule 206 requires that a complaint must contain the "relevant facts," and the "position taken by the participant...and the basis in fact and law for such position."<sup>33</sup>

19. The complaint filed in this matter is quite difficult to understand. It consists of a number excerpts from other non-Commission proceedings pertaining to the San Bruno explosion, i.e., transcripts, e-mail blogs as well as evidence presented in proceedings pertaining to the implementation and deployment of smart meters in PG&E's service territory. The complainants after noting the above, attempt to dovetail these excerpts with the Commission's issuance of a limited blanket certificate to PG&E as support for its request to have the Commission conduct an independent review of the explosion and impose millions of dollars in penalties upon PG&E. The allegations are vague, unsupported, disjunctive, and difficult for the Commission to discern a coherent argument. Despite its many attachments and references to other proceedings, the complaint fails to clearly and with specificity articulate the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements. The most that can be said is that complainants are not pleased with the NTSB's review, the Independent Review Panel's review and the CPUC's current proceedings addressing the San Bruno explosion. Complainant's displeasure with these reviews and proceedings do not constitute a basis to support a complaint before this Commission.

20. In the past, the Commission has admonished parties that "rather than bald allegations, [complainants] must make an adequate proffer of evidence including

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<sup>31</sup> 18 C.F.R. § 385.102(c)(2) (2012).

<sup>32</sup> 18 C.F.R. § 385.214 (2012).

<sup>33</sup> 18 C.F.R. § 385.203(a) (2012).

pertinent information and analysis to support its claims.”<sup>34</sup> The Commission has provided guidance to CARE on the Commission’s Rules of Practice and Procedure and the requirements for a complaint on numerous occasions.<sup>35</sup> Moreover, the Commission has provided detail guidance to CARE on Rule 206, which governs complaint proceedings.<sup>36</sup> Accordingly, the Commission will dismiss the complaint.

The Commission orders:

The complaint filed by CARE, Mr. Boyd and Mr. Sarvey is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>34</sup> *Illinois Municipal Elec. Agency v. Central Illinois Public Serv. Co.*, 76 FERC ¶ 61,084, at 61,482 (1996).

<sup>35</sup> *See Californians for Renewable Energy, Inc. v. National Grid, Cape Wind, and the Massachusetts Department of Public Utilities*, 139 FERC ¶ 61,117 (2012); *Californians for Renewable Energy, Inc. v. Pacific Gas & Electric Co.*, 129 FERC ¶ 61,141 (2009); *Californians for Renewable Energy, Inc. v. California Pub. Utils. Comm’n*, 129 FERC ¶ 61,075 (2009), *reh’g denied*, 131 FERC ¶ 61,102 (2010); *Californians for Renewable Energy, Inc. v. Pacific Gas and Elec. Co.*, 134 FERC ¶ 61,060 (2011); *Californians for Renewable Energy, Inc. v. Pacific Gas & Electric Co., and Contra Costa Generating Station LLC*, 142 FERC ¶ 61,143 (2013); *Californians for Renewable Energy, Inc. v. California Pub. Utils. Comm’n, Pacific Gas & Electric Co., and Contra Costa Generating Station LLC*, 142 FERC ¶ 61,143 (2003).

<sup>36</sup> *Californians for Renewable Energy, Inc. v. National Grid, Cape Wind, and the Massachusetts Dep’ of Pub. Utilis.*, 137 FERC ¶ 61,113 (2011), *reh’g denied*, 139 FERC ¶ 61,117 (2012).