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U.S. Drops $562 Million Alternative Fines Act Allegation Against PG&E

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Today, the United States requested permission to dismiss its Alternative Fines Act sentencing allegation against PG&E. Under the AFA, a court can impose a criminal fine equal to twice the pecuniary gain to the defendant or twice the pecuniary loss suffered by victims. Last September, the court dismissed the government's loss-based allegations, finding that proving those allegations would be unduly complicated. Today, the government gave up on the "twice the gain" allegation. The result is a significant decrease in the potential fine faced by PG&E—down from $562 million to $5.5 million.

The government's decision appears to be based on PG&E's motion questioning whether the second stage of the bifurcated trial should proceed. In its motion, PG&E pointed out that the government never put on its expert on the finance and ratemaking process during the guilt phase. It is not clear why the government made that decision. But the impact is clear—the jury has not been presented with any evidence on the complex practice of regulatory rate-making. Even if the government had provided evidence on the rate-making process, PG&E made clear that surveying the various pipelines at issue, identifying which costs were forgone (and thus an unfair gain), and then figuring out which costs were passed on to consumers versus which costs become part of the rate base would be an uphill, onerous task for the second phase of the trial.

Faced with this proposition, the government blinked and dismissed the AFA allegations. The jury is still deliberating PG&E's guilt or innocence, but the costs to PG&E, if it is found guilty, just went down.