

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking on the Commission's )  
Own Motion to Adopt New Safety and Reliability )  
Regulations for Natural Gas Transmission and )  
Distribution Pipelines and Related Ratemaking )  
Mechanisms. )  
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R.11-02-019  
(Filed February 24, 2011)

**OPENING BRIEF OF  
SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)  
AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M)  
ON PACIFIC GAS AND ELECTRIC COMPANY'S IMPLEMENTATION PLAN**

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As part of its concerted efforts, described in greater detail below, the Commission declared on June 9, 2011 that “all natural gas transmission pipelines in service in California must be brought into compliance with modern standards of safety. Historic exemptions must come to an end with an orderly and cost-conscious implementation plan.”<sup>1</sup> To accomplish this sweeping regulatory change, the Commission directed all California natural gas pipeline operators to file and serve “a proposed Natural Gas Transmission Pipeline Comprehensive Pressure Testing Implementation Plan (Implementation Plan) to comply with the requirement that all in-service natural gas transmission pipeline in California has been pressure tested in accord with 49 CFR 192.619, excluding subsection 49 CFR 192.619 (c).”<sup>2</sup>

As directed in this order, on August 26, 2011, California pipeline operators, including PG&E, SoCalGas, SDG&E and Southwest Gas Corporation, all filed proposed plans to meet the Commission’s objectives. While the Commission initially contemplated considering all of the proposed plans simultaneously in this Rulemaking, as explained in the procedural background below, the Commission subsequently determined it should first consider PG&E’s proposed plan in this Rulemaking, subsequently consider SoCalGas and SDG&E’s proposed plan in their Triennial Cost Allocation Application Proceeding, and has yet to set a schedule for hearings on Southwest Gas’ proposed plan. In this Opening Brief, SoCalGas and SDG&E urge the Commission to refrain from determining issues in connection with PG&E’s proposed plan in this proceeding that would prejudice other parties by depriving them of a full and fair opportunity to be heard with respect to the proposed plans of other California pipeline operators. SoCalGas and SDG&E ask that the Commission defer its determination of material issues of fact that may generally apply to the proposed plans of PG&E, SoCalGas, SDG&E and Southwest Gas before the latter three utilities have had an opportunity to fully present their cases and submit evidence supporting their plans. It appears, based on the nature of questioning during the evidentiary hearings on PG&E’s plans and on data requests received by SoCalGas and SDG&E that at least

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<sup>1</sup> D.11-06-017, p. 18.

<sup>2</sup> D.11-06-017, Ordering Paragraph 3.

two potentially material issues may fall into this category: (1) the definition and applicability to the natural gas industry of the term “traceable, verifiable and complete;” and (2) existing and historical recordkeeping requirements, and industry best practices, with respect to natural gas pipelines installed prior to July 1, 1970.

## **II. PROCEDURAL BACKGROUND**

On January 3, 2011, the National Transportation Safety Board (NTSB) issued four safety recommendations in connection with its investigation of the September 9, 2010 natural gas pipeline rupture and fire in San Bruno. These NTSB safety recommendations focus on the importance of identifying pipeline segments that have not been strength tested after construction for additional analysis and testing, and are specific to transmission pipelines in Class 3 and Class 4 locations and Class 1 and Class 2 high consequence areas (HCA).

Three safety recommendations were directed specifically to PG&E and provide as follows:

NTSB Safety Recommendation P-10-2 (Urgent):

Aggressively and diligently search for all as-built drawings, alignment sheets, and specifications, and all design, construction, inspection, testing, maintenance, and other related records, including those records in locations controlled by or firms other than Pacific Gas and Electric Company, relating to pipeline system components, such as pipe segments, valves, fittings, and weld seams for Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing. These records should be traceable, verifiable, and complete. (emphasis added)

NTSB Safety Recommendation P-10-3 (Urgent):

Use the traceable, verifiable, and complete records located by implementation of Safety Recommendation P-10-2 (Urgent) to determine the valid maximum allowable operating pressure, based on the weakest section of the pipeline or component to ensure safe

operation, of Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing.

NTSB Safety Recommendation P-10-4:

If you are unable to comply with Safety Recommendations P-10-2 (Urgent) and P-10-3 (Urgent) to accurately determine the maximum allowable operating pressure of Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing, determine the maximum allowable operating pressure with a spike test followed by a hydrostatic pressure test.

The fourth safety recommendation was issued to the Commission and recommended that the Commission “immediately inform California intrastate natural gas transmission operators of the circumstances leading up to and the consequences of the September 9, 2010, pipeline rupture in San Bruno, California, and the National Transportation Safety Board's urgent safety recommendations to Pacific Gas and Electric Company so that pipeline operators can proactively implement corrective measures as appropriate for their pipeline systems.”<sup>3/</sup>

That same day, Paul Clanon, Executive Director of the Commission, sent a letter to SoCalGas, Southwest Gas Corporation and SDG&E advising them of the Safety Recommendations to PG&E, and directing each to “pay particular attention to NTSB recommendations to PG&E titled P-10-2, P-10-3, and P-10-4.”<sup>4/</sup> The letter further directed each gas pipeline operator to report to the Executive Director by February 1, 2011, “detailing the steps

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<sup>3/</sup> NTSB Safety Recommendation P-10-007 (Urgent), January 3, 2011. *See also* January 3, 2011 letter from the NTSB to Paul Clanon, Executive Director of the Commission, available at <http://www3.nts.gov/recs/letters/2010/P-10-005-007.pdf>.

<sup>4/</sup> January 3, 2011 letter from Paul Clanon, Executive Director of the Commission to Michael Allman, President and Chief Executive Officer, Southern California Gas Company, Jeffrey Shaw, Chief Executive Officer, Southwest Gas Corporation, and Jesse Knight, Jr., Chairman and Chief Executive Officer, San Diego Gas & Electric Company, available at <http://www.cpuc.ca.gov/NR/rdonlyres/CE921E44-7596-4B04-B875-A0F521FF27A3/0/LettertoSoCalUtilities010311.PDF>.

you will take proactively to implement corrective actions as appropriate for your natural gas transmission pipeline systems located in California.”<sup>5</sup>

On February 1, 2011, Richard M. Morrow, Vice President, Engineering & Operations Staff for SoCalGas and SDG&E, sent a responsive letter to Executive Director Clanon reporting on the steps that SoCalGas and SDG&E are taking proactively to implement corrective actions, as appropriate, for their natural gas transmission pipeline systems located in California. Mr. Morrow advised Executive Director Clanon that SoCalGas and SDG&E have given the Commission’s directive their “highest priority” and that they “intend to work with the [Commission] to implement the NTSB’s recommendations as expeditiously as possible.”<sup>6</sup>

In addition, SoCalGas and SDG&E stated that they would continue their pipeline safety practices “through leak surveys, pipeline patrols, corrosion control monitoring, valve maintenance, and implementation of [their] transmission integrity management program, all of which continually evaluate and assess pipeline conditions and fitness for service.”<sup>7</sup>

On February 25, 2011, the Commission issued Order Instituting Rulemaking on the Commission’s Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms (OIR) instituting this Rulemaking. In the OIR, the Commission described this Rulemaking as “a forward-looking effort to establish a new model of natural gas pipeline safety regulation applicable to all California pipelines. Specific investigations of PG&E’s conduct and any penalties will take place in a separate docket.”<sup>8</sup>

On April 15, SoCalGas and SDG&E submitted a Report on Actions Taken in Response to NTSB’s Safety Recommendations to PG&E (April 15 Report). To address the NTSB’s safety recommendations to PG&E and the Commission as expeditiously as possible, SoCalGas and

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

<sup>6</sup> Letter from Richard M. Morrow, Vice President, Engineering and Operations Staff for SoCalGas and SDG&E to Paul Clanon, Executive Director of the Commission, dated February 1, 2011, available at <http://www.cpuc.ca.gov/NR/rdonlyres/7AADB320-E55A-44D9-B09C-60C30A99FA59/0/Document79.pdf>.

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

<sup>8</sup> OIR, p. 3.

SDG&E implemented a comprehensive process of records review and analysis that categorized pipelines and pipe segments for further action and proposed a schedule for developing a segment-specific action plan for pipeline segments deemed by SoCalGas and SDG&E to require further action. In the April 15 Report, SoCalGas and SDG&E explain:

Although NTSB Safety Recommendation P-10-3 authorizes PG&E to “[u]se traceable, verifiable and complete records located by implementation of Safety Recommendation P-10-2 (Urgent) to determine the valid maximum allowable operating pressure, based on the weakest section of the pipeline or component to ensure safe operation,” SoCalGas and SDG&E did not validate the MAOP of any pipeline segments using the approach specified in Safety Recommendation P-10-3. In order to do so, SoCalGas and SDG&E believe they would need to affirmatively state that no pipeline materials other than those specified and documented in identified records were installed. That is, records must demonstrate, without fail, that no components of any portion of the pipeline segment were changed subsequent to the date of identified records, effectively requiring a perfect chain of document custody for pipelines that may have been installed over fifty years ago and that have been subject to many different document retention regulatory requirements.

This is a very difficult, if not infeasible, threshold to achieve, and such a process could not be completed within the time allotted for this report. SoCalGas and SDG&E believe it prudent to preliminarily and conservatively classify these pipelines as [requiring further action]. Both utilities therefore focused their efforts instead toward development of an action plan for all pipeline segments [designated for further action].<sup>9</sup>

On June 16, 2011, the Commission issued D.11-06-019, which directed all California natural gas pipeline operators to file and serve “a proposed Natural Gas Transmission Pipeline Comprehensive Pressure Testing Implementation Plan (Implementation Plan) to comply with the requirement that all in-service natural gas transmission pipeline in California has been pressure tested in accord with 49 CFR 192.619, excluding subsection 49 CFR 192.619 (c).”<sup>10</sup>

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<sup>9</sup> April 15 Report, p. 9.

<sup>10</sup> D.11-06-017, Ordering Paragraph 3.

Also, on June 16, 2011, the Assigned Commissioner issued a Scoping Memo and Ruling, which ordered California pipeline operators to file their proposed Implementation Plans by August 26, 2011. Parties were directed to serve opening testimony on the Implementation Plans on October 17, 2011 and rebuttal testimony was to be served on October 28, 2011.

On November 2, 2011, the Assigned Commissioner issued an amended scoping memo and ruling (November 2 Scoping Memo), which granted a request by the Division of Ratepayer Advocates (DRA) to extend the procedural schedule to extend the deadline for intervenor testimony 120 days to February 15, 2012. In addition, the November 2 Scoping Memo indicated that the Assigned Commissioner was “considering narrowing the scope of the ratemaking issues in this proceeding by transferring ratemaking issues for the SoCalGas and SDG&E Implementation Plan to a separate phase of their ongoing general rate cases (GRCs) or to their next GRCs.”<sup>11</sup> The November 2 Scoping Memo scheduled evidentiary hearings on PG&E’s Implementation Plan for March 12-23, 2012, but did not include a schedule for hearings on the SoCalGas/SDG&E proposed Implementation Plan. Rather, the November 2 Ruling, among other things, directed SoCalGas and SDG&E to provide an “assessment of the feasibility of transferring the ratemaking associated with the Implementation Plan to those cases.”<sup>12</sup>

On December 21, 2011, the Assigned Commissioner issued a ruling stating that “[u]pon further review, I now believe that the pending Triennial Cost Allocation Proceeding recently filed as Application (A.) 11-11-002 is the most logical proceeding for the SDG&E and SoCalGas reasonableness and ratemaking review. That proceeding deals with cost allocation and rate design and therefore it would be beneficial to reassign the implementation plans to it to take advantage of an evidentiary record and policy decisions emerging there.”<sup>13</sup> The parties were directed to submit comments on the question of reassignment of the reasonableness and ratemaking issues to the Cost Allocation Proceeding versus the pending or future GRCs.

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<sup>11</sup>/ November 2 Ruling p. 4.

<sup>12</sup>/ November 2 Scoping Memo, p. 4.

<sup>13</sup>/ December 21 Ruling, p. 2.



On January 13, 2012, SoCalGas and SDG&E submitted comments in response to the November 2 Scoping Memo and December 21 Ruling indicating that the Triennial Cost Allocation Proceeding would be an appropriate venue for consideration of our proposed Implementation Plan provided that the transfer to that proceeding does not result in undue delay of consideration of our proposed plan and that the technical aspects or “substance” of our proposed plan would be considered along with the ratemaking aspects.

On April 20, 2012, the Commission issued D.12-04-021, which transferred consideration of the SoCalGas/SDG&E proposed Implementation Plan to the Triennial Cost Allocation Proceeding and authorized SoCalGas and SDG&E to establish memorandum accounts to record the demonstrably incremental costs of implementing the Implementation Plan and new record-keeping requirements. In deciding to transfer the SoCalGas/SDG&E Implementation Plan to the Triennial Cost Allocation Proceeding, the Commission explained:

In this Rulemaking, PG&E’s Implementation Plan is being carefully scrutinized by the parties and will soon be the subject of extended evidentiary hearings. Most of the parties to this proceeding are fully occupied with unique issues raised by PG&E’s plan in this proceeding. Therefore, to afford the SDG&E and SoCalGas Implementation Plan the same level of scrutiny and review, the Assigned Commissioner has proposed that this Plan be moved to another proceeding, the Triennial Cost Allocation Proceeding. All parties support this transfer and we approved it.<sup>14/</sup>

### **III. DISCUSSION**

#### **A. Due Process Requires that SoCalGas and SDG&E Be Given a Fair and Full Opportunity to Present Their Case and Be Heard with Respect to their Proposed Implementation Plan.**

United States Supreme Court and California Supreme Court precedents make clear that due process requires that a party in an administrative proceeding be given a fair and full opportunity to present its case and be heard.<sup>15/</sup> In fact, the very grant of authority to the

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<sup>14/</sup> D.12-04-021, p. 6.

<sup>15/</sup> See U.S. Const., 14th Amend., Cal. Const., art. 1, § 7. See also *Mathews v. Eldridge*, 424 U.S. 319 (1976); *People v. Western Airlines*, 42 Cal.2d 621, 632 (1954).

Commission is prefaced by the requirement that Commission procedures are “[s]ubject to statute and due process.”<sup>16/</sup> The United States Supreme Court has held that notice and an opportunity to be heard is the “root requirement” and “general rule” of due process.<sup>17/</sup> The California Supreme Court has stated that due process in a Commission proceeding is provided by meeting the requirement of “adequate notice to a party affected and an opportunity to be heard before a valid order can be made.”<sup>18/</sup>

In this proceeding, the Commission deferred and transferred consideration of the SoCalGas/SDG&E Implementation Plan to the Triennial Cost Allocation Proceeding. Evidentiary hearings on the SoCalGas/SDG&E Implementation are not scheduled to take place until August 20-31, 2012. Under the circumstances, SoCalGas and SDG&E have not yet had a full and fair opportunity to be heard with respect to their proposed Implementation Plan. Accordingly, in its decision with respect to PG&E’s proposed Implementation Plan, due process requires that the Commission refrain from making any determinations that would deprive SoCalGas and SDG&E of a full and fair opportunity to be heard with respect to their proposed Implementation Plan. As described below, based on the questioning of witnesses at the evidentiary hearings on PG&E’s proposed Implementation Plan, and on data requests received to date by SoCalGas and SDG&E, it appears at least two issues overlap among the Implementation Plans of all California pipeline operators, and therefore, those issues should not be subject to a final determination by the Commission until each California pipeline operator, and the parties interested in the implementation plans of those operators, have had a full and fair opportunity to present their cases and be heard. Specifically, the Commission should not render a determination of the definition and applicability in the natural gas industry of the term “traceable, verifiable and complete” and should not yet rule on the historic and current record-keeping requirements and industry best practices for pipeline segments installed prior to July 1,

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<sup>16/</sup> Cal Const, Art. XII § 2.

<sup>17/</sup> *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 503-504 (1985) (citations omitted); *United States v. James Daniel Good Real Property*, 510 U.S. 43, 50 (1993).

<sup>18/</sup> *People v. Western Air Lines, Inc.*, 42 Cal. 2d 621, 632 (1954).

1970, the date the provisions of 49 CFR 192.619 went into effect. SoCalGas and SDG&E anticipate that intervening parties may present testimony on these issues in connection with their review and comment on the SoCalGas/SDG&E proposed Implementation Plan and, should intervenors offer testimony on those issues, SoCalGas and SDG&E intend to offer rebuttal testimony in support of their proposed Implementation Plan.

**B. The Commission Should Refrain from Adopting Parties' Ratemaking Proposals Founded Upon Factual Claims Regarding Historic Recordkeeping and Pressure Testing Practices in the Industry Until SoCalGas and SDG&E Have Had a Full and Fair Opportunity Present Their Case.**

DRA and The Utility Reform Network (TURN) each offer ratemaking proposals with respect to PG&E's Implementation Plan based on factual assertions that, if adopted, may deprive SoCalGas and SDG&E of a full and fair opportunity to present their case in support of their proposed plan. For example, DRA asserts that "pressure testing of natural gas transmission pipelines has been an industry standard for over 75 years" and "recommends that PG&E be held responsible for the costs associated with hydrostatic testing for all transmission pipelines installed after 1935 in the absence of records that show a test was performed in accordance with industry standards."<sup>19</sup> DRA further argues that "for the investment in new pipeline to replace existing gas transmission pipeline associated with PG&E's Implementation Plan that was installed after 1955, the investment cost should be entirely borne by PG&E's shareholders. For any pipeline installed subsequent to 1955, the ASA Code clearly stated that records should be retained for hydrostatic tests."<sup>20</sup> TURN offers similar arguments in its testimony, stating "PG&E claims it should only be held accountable for pipeline installed post-1970. However, as discussed by Mr. Kuprewicz and acknowledged by PG&E, industry standards required strength testing of all new pipeline at least as early as 1955. Thus, PG&E should at least have strength test records for the miles of 1955 or later pipe that it proposes to replace."<sup>21</sup> These assertions by

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<sup>19</sup> Exh. 143, DRA Report on the Pipeline Safety Enhancement Plan of PG&E, Policy – Cost Recovery, pp. 20-21.

<sup>20</sup> *Id.*, p. 27.

<sup>21</sup> Exh. 121, Prepared Testimony of Thomas J. Long on Cost Responsibility Issues, p. 11.

DRA and TURN have significant implications for all California pipeline operators, and therefore, the Commission should not make a final determination until there is a full and complete record.

Should DRA and TURN set forth similar proposals with respect to SoCalGas and SDG&E's plan, SoCalGas and SDG&E intend to offer evidence regarding historic natural gas industry pressure testing and recordkeeping practices and standards in support of their proposed plan. SoCalGas and SDG&E will effectively be deprived of a full and fair opportunity to present their case, if the Commission renders factual determinations regarding historic recordkeeping and pressure testing standards and practices in the industry solely based on the record created during the review of PG&E's Implementation Plan.

**C. The Definition and Applicability to the Natural Gas Industry of the Phrase "Traceable, Verifiable and Complete" is Currently Under Development by Federal Regulators and the Commission Should Avoid Reaching a Premature and Potentially Inconsistent Determination of this Issue Ahead of Federal Regulators.**

As noted in the overview of the procedural background above, the NTSB used the term "traceable, verifiable and complete" when it issued its January 3, 2011 safety recommendations to PG&E. If the issue of the definition and applicability to the natural gas industry of this phrase is raised in connection with the consideration of the SoCalGas/SDG&E Implementation Plan, SoCalGas and SDG&E intend to offer testimony into evidence demonstrating that this phrase was first used in the natural gas industry in those January 3, 2011 safety recommendations to PG&E and that the phrase "traceable, verifiable and complete" was not part of any regulatory requirements that existed prior to that date.

On May 7, 2012, the Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) published an Advisory Bulletin (ADB-2012-06) to "remind operators of gas and hazardous liquid pipeline facilities to verify their records relating to operating specifications for maximum allowable operating pressure (MAOP) required by 49 CFR 192.517 and maximum operating pressure (MOP) required by 49 CFR 195.310." "This

advisory bulletin informs gas operators of anticipated changes in annual reporting requirements to document the confirmation of MAOP, how they will be required to report total mileage and mileage with adequate records, when they must report, and what PHMSA considers an adequate record.”<sup>22</sup>

As explained in the Advisory Bulletin:

On January 3, 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Act), which requires PHMSA to direct each owner or operator of a gas transmission pipeline and associated facilities to provide verification that their records accurately reflect MAOP of their pipelines within Class 3 and Class 4 locations and in Class 1 and Class 2 locations in High Consequence Areas (HCAs). Beginning in 2013, PHMSA intends to require operators to submit data regarding verification of records in these class locations via the Gas Transmission and Gathering Systems Annual Report. . . .

As directed in the Act, PHMSA will require each owner or operator of a gas transmission pipeline and associated facilities to verify that their records confirm MAOP of their pipelines within Class 3 and Class 4 locations and in Class 1 and Class 2 locations in HCAs. PHMSA intends to require gas pipeline operators to submit data regarding mileage of pipelines with verifiable records and mileage of pipelines without records in the annual reporting cycle for 2013. . . .

Owners and operators should consider the guidance in this advisory for all pipeline segments and take action as appropriate to assure that all MAOP and MOP are supported by records that are traceable, verifiable and complete. Information needed to support establishment of MAOP and MOP is identified in § 192.619, § 192.620 and § 195.406. An owner or operator of a pipeline must meet the recordkeeping requirements of Part 192 and Part 195 in support of MAOP and MOP determination.

Traceable records are those which can be clearly linked to original information about a pipeline segment or facility. Traceable records might include pipe mill records, purchase requisition, or asbuilt documentation indicating minimum pipe yield strength, seam type, wall thickness and diameter. Careful attention should be given to

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<sup>22</sup> May 7, 2012 PHMSA Advisory Bulletin 2012-0068, published in Volume 77, Number 88 of the Federal Register.

records transcribed from original documents as they may contain errors. Information from a transcribed document, in many cases, should be verified with complementary or supporting documents.

Verifiable records are those in which information is confirmed by other complementary, but separate, documentation. Verifiable records might include contract specifications for a pressure test of a line segment complemented by pressure charts or field logs. Another example might include a purchase order to a pipe mill with pipe specifications verified by a metallurgical test of a coupon pulled from the same pipe segment. In general, the only acceptable use of an affidavit would be as a complementary document, prepared and signed at the time of the test or inspection by an individual who would have reason to be familiar with the test or inspection.

Complete records are those in which the record is finalized as evidenced by a signature, date or other appropriate marking. For example, a complete pressure testing record should identify a specific segment of pipe, who conducted the test, the duration of the test, the test medium, temperatures, accurate pressure readings, and elevation information as applicable. An incomplete record might reflect that the pressure test was initiated, failed and restarted without conclusive indication of a successful test. A record that cannot be specifically linked to an individual pipe segment is not a complete record for that segment. Incomplete or partial records are not an adequate basis for establishing MAOP or MOP. If records are unknown or unknowable, a more conservative approach is indicated.<sup>23/</sup>

As the express language of the Advisory Bulletin indicates, these are “anticipated changes” to Federal regulations that are not yet in place. The Commission should avoid issuing a determination of the definition and applicability of the phrase “traceable, verifiable and complete” before PHMSA has yet had an opportunity to adopt Federal regulations determining this same issue.

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

