Docket:	:	I.11-02-016
Exhibit Number	:	
Commissioner	:	M. Florio
Admin. Law Judge	:	A. Yip-Kikugawa
Witness	:	J. Halligan

Consumer Protection And Safety Division
California Public Utilities Commission

REBUTTAL TESTIMONY OF JULIE HALLIGAN

I.11-02-016

San Francisco, California
August 20, 2012

I. INTRODUCTION

The purpose of this rebuttal testimony is to provide CPSD's assessment of the June 27 PG&E Response testimony from a regulatory policy perspective. CPSD will explain why certain PG&E arguments do not constitute legitimate defenses to the charges of deficient recordkeeping set out in CPSD's March 2012 testimony and its supplemental testimony. CPSD does not assert additional violations in this testimony.

This testimony addresses four defenses that PG&E has raised in its testimony. First, PG&E contends that other operators have deficient recordkeeping practices. This contention is not a valid defense to the alleged violations of law. Second, PG&E argues that there was no regulation requiring it to maintain certain records that are the subject of alleged violations. However, CPSD expects PG&E and all Commission regulated gas utilities to use good engineering practices to promote the safety of their gas system. Natural gas transportation is a hazardous activity, and CPSD expects gas utilities to use best engineering practices available even without specific prescriptive laws or regulations mandating every engineering practice that PG&E must undertake to keep its system safe. Third, PG&E's assertions that it has changed or is changing its recordkeeping practices since the San Bruno tragedy have no bearing on whether PG&E violated the law previously. Fourth, contrary to PG&E's assertions, ASME Standard B31.8 carries the weight of law and CPSD's testimony alleging independent violations of this standard are valid. Each of these topics is discussed below.

II. Other Gas Operators' Record Keeping Practices

PG&E claims that other utilities or gas transporters have also failed to maintain gas transportation records or data.[1]

PG&E's assertions about others in the industry are both unproven and irrelevant to the issues in this proceeding. PG&E's testimony is insufficient to establish whether the recordkeeping deficiencies of other companies rise to the level of violations of law.

[1]. Examples see PG&E Response testimony, pp. 3-28, 3-54, 3-66

PG&E's testimony simply asserts that gas transporters face "significant gas transmission records challenges in locating records".[2] PG&E also provides examples of industry challenges to locate records.[3] A record keeping "challenge" to the industry, however, does not establish that prevailing industry practice is to keep records in violation of the law or in an unsafe manner. The Commission's recordkeeping investigation of PG&E is not designed to ascertain whether any other utility in California or the nation has violated the law by its deficient recordkeeping.

Second, industry practice is irrelevant to whether PG&E's recordkeeping practices have violated the law. CPSD and the Commission have always determined violations of law based on the actions and omissions of the utility under review.

III. Obligation to Use Safe Engineering Practices

A. CPSD and the Commission Expect PG&E to Use Appropriate Engineering Practice to Promote the Safety of Its System

PG&E asserts or implies in its testimony that it did not violate any regulation where none explicitly required certain record types to be retained or maintained in a particular way or for a specified length of time.[4] Again, CPSD regulators expect PG&E to keep its gas transmission system safe, regardless of specific directives to maintain data.[5] CPSD expects all utilities to understand and implement this requirement regardless of whether an explicit recordkeeping or other safety requirement exists.

PG&E is a large and established public utility and is responsible for ensuring the safety of its customers, employees, and the public. PG&E can only do so by exercising good engineering practices in compliance with Section 451 of the Public Utilities Code. The transportation of gas through pipes is an activity that is hazardous to life and health if

[2] PG&E Response Testimony Page 1-12.
[3] PG&E Response Testimony Pages 1-13 to 1-15.
[4] PG&E contends this with respect to records Ms Felts has found as inadequate to safely track the location, age, and characteristics of re-used pipe (PG&E response p. 3-28), deficient weld records (Id at 3-54 through 3-37), deficient records needed to establish transmission pipe overpressure before federal integrity management guidelines explicitly required the information (Id at 3-68), and deficient leak records (Id at 3-64 and 3-65).
[5] California Public Utilities Code Section 451 provides in part, "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities. . .as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

good engineering practices are not exercised over the entire system. If safety depends - as it does in some instances here – on maintaining recordkeeping that is not explicitly mandated by regulation – CPSD expects PG&E to maintain the recordkeeping needed to achieve safety. CPSD expects such from all utilities regardless of whether explicit and specific recordkeeping requirements exist.

As utility regulators, CPSD also expects PG&E to recognize when a regulation implies a requirement of good recordkeeping, although it may not explicitly mandate it. From a safety perspective, virtually all engineering data on pipelines must be maintained, regardless of whether a regulation explicitly requires it. As examples, engineers need to know the life service history of a pipe and its chemical and weld characteristics before they can make integrity management decisions on whether to replace, repair, or test each pipe. The best and often the only practical means for engineers to assess these matters is by adequate recordkeeping.

In PG&E's response testimony, Mr. De Leon describes historic record keeping requirements.[6] In his own summary, he states that the GO 112 series record keeping requirements became less prescriptive over time, and that federal regulators have not imposed detailed recordkeeping standards.[7] Both of these themes support CPSD's view that PG&E has always had a requirement to promote the safety of its own system, regardless of whether there are specific prescriptive requirements to do so.[8] Therefore, any explicit prescriptive or detailed record keeping requirements merely added to PG&E's basic engineering and legal duty to keep and maintain records to promote the safety of its system.

Mr. De Leon contends that "federal regulations have dealt pragmatically with the challenge that gas operators may lack complete gas pipeline safety records."[9] However, recognizing that some utilities "may lack complete gas pipeline safety records" does not

[6] PG&E Response Testimony, Chapter 1 Appendix B, June 20, 2011, Testimony of Cesar De Leon.
[7] Ibid. at Pages 1B-15 and 1B-16.
[8] For a discussion on the requirements for a utility to generally promote the safety of its own system, see Section II. B.
[9] PG&E Response Testimony, Chapter 1 Appendix B, June 20, 2011, Testimony of Cesar De Leon, Page 1B-15.

excuse the specific violations CPSD has identified.[10] PG&E had and has a duty to promote the safety of its system by properly maintaining and managing its records.

B. The Commission Has Made It Clear that a Utility Must Promote the Safety of Its System Regardless of Specific Prescription or Prohibition

In the decision that adopted General Order 112, making the ASME record keeping requirements mandatory, the Commission recognized and articulated the rationale underlying the general requirement that operators keep their systems safe. Specifically, the Commission stated,

> "It is recognized that no code of safety rules, no matter how carefully and well prepared, can be relied upon to guarantee complete freedom from accidents. Moreover, the promulgation of precautionary safety rules does not remove or minimize the primary obligation and responsibility of respondents to provide safe service and facilities in their gas operations. Officers and employees of the respondents must continue to be ever conscious of the importance of safe operating practices and facilities and of their obligation to the public in that respect."[11] (PG&E was one of the respondents in the GO 112 proceeding.)

Even though the Commission had the foresight in GO 112 to mandate that PG&E keep its records properly, it also recognized that regulators cannot envision and explicitly prohibit each and every way that utilities might fail to keep their systems safe, and cannot explicitly mandate each and every action that utilities must take to keep their systems safe. As such, the Commission understood that regulators cannot articulate every possible requirement to prevent an operator's unforeseeable, but unsafe conduct.

The Commission has confirmed that the Public Utilities Code Section 451 requirement to make utilities keep their systems safe is constitutional. The Commission specifically said,

> ". . .it would be virtually impossible to draft Section 451 to specifically set forth every conceivable service, instrumentality and facility which might be defined as 'reasonable' and necessary to

[10] Specific violations are identified in CPSD's supplemental testimony, Dated March 30, 2012.
[11] California Public Utilities Decision Number 61269, "Investigation into the Need of a General Order Governing Design, Construction, Testing, Maintenance and Operation of Gas Transmission Pipeline Systems.", Page 12, Finding and Conclusion Number 8, December 28, 1960.

promote the public safety. That the terms are incapable of precise definition given the variety of circumstances likewise does not make Section 451 void for vagueness, either on its face or in application to the instant case. The terms 'reasonable service, instrumentalities, equipment and facilities' are not without a definition, standard or common understanding among utilities. . . Accordingly, Section 451's mandate that a utility provide "reasonable service, instrumentalities, equipment and facilities" is not an unconstitutionally vague standard with which to assess a fine or penalty."

IV. PG&E's Future Recordkeeping

Much of PG&E's response testimony is devoted to its proposals and plans to improve its records management practices.[12] CPSD welcomes changes to improve PG&E's recordkeeping and safety.[13] However, CPSD urges the Commission to recognize that PG&E's proposals for improvement are not a defense to previous PG&E violations of the law.

Further, CPSD has not conducted discovery, analyzed or taken a position on PG&E's statements about improving its record management practices. Determining the manner in which each record keeping system should be revised or improved is not within the scope of this proceeding.

V. ASME STANDARD B31.8 CARRIES THE WEIGHT OF LAW AND ALLEGING INDEPENDENT VIOLATIONS OF THIS STANDARD IS VALID

The American Standards of Mechanical Engineers (ASME) is a set of industry standards that have been followed by the gas industry since long before 1956. The testimony of CPSD consultants has asserted PG&E violations of these standards. Through several witnesses, PG&E asserts that ASME Standard B31.8 does not set a legal requirement for PG&E to follow. One PG&E witness asserts, "ASME does not carry the weight of law."[14] Another PG&E witness states "Using ASME Standard B31.8 as an independent basis for asserting a regulatory violation does

[12] CPSD does not concede that any of these efforts are proper remedial actions.
[13] I.11-02-016 Assigned Commissioner's Scoping Memo and Ruling, 11/21/2011, Page 2.
[14] PG&E Testimony of Maura L. Dunn at Page MD-39.

not make any sense."[15] To the contrary, as discussed below, CPSD believes ASME Standard B31.8 does carry the weight of law and can be violated.

First, PG&E represented to the Commission that the company followed ASME standards for gas transmission and distribution piping systems (ASME B31.8). PG&E represented this in 1956[16] and again in 1960.[17] PG&E now states it is aware of no representations made to the Commission since those times that PG&E no longer followed the American Standards Association Code for gas transmission and distribution piping systems (ASME standard B31.8.)[18] Regulators should be able to expect that when PG&E and other utilities make representations that they follow certain engineering standards, those utilities will not simply abandon those standards without notice to regulators. In short, PG&E's representation - and the importance to PG&E safety of compliance with ASME standards – requires it to follow ASME standards.

Second, since 1970, the Code of Federal Regulations has required each operator to follow its own procedures and programs that apply to its regulated pipelines.[19] PG&E's representation that it voluntarily followed the ASME B31.8 standards in 1956 and 1960 gave those standards the force of law. Of course, these are matters to be addressed in briefs, but we comment here because PG&E's response has asserted the argument. In short, CPSD believes it is appropriate to identify violations of ASME B31.8.

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[15] PG&E Response Testimony of Mr. Cesar de Leon at Page 1-5, lines 31-32.

[16] In its response to CPSD Data Request 15, Question 6 PG&E stated, "PG&E believes that, in 1956, its practice was to follow ASA B31.1.8-1955." According to that same data response, today, ASA B31.1.8-1955 is known as ASME B31.8.

[17] See D.61269, "Investigation into the Need of a General Order (GO 112) Governing Design, Construction, Testing, Maintenance and Operation of Gas Transmission Pipeline Systems.",
December 28, 1960, P. 4, in which PG&E and other gas operators asserted that General Order 112 was not necessary. They were quoted by this decision as claiming, "[T]here is no evidence to show that public health or safety has suffered from the lack of a general order; that the safety record of California gas utilities has been excellent; that there have been no major pipeline failures in the State resulting in either loss of life or major interruption of service; that there is nothing to indicate this good record will not continue; and that the gas utilities in California voluntarily follow the American Standards Association (ASA) code for gas transmission and distribution piping systems." (ASME Standard B31.8).

[18] PG&E Response to CPSD Data Request 71 Question 1c.

[19] 49 CFR Section 192.13(c), August 19, 1970.