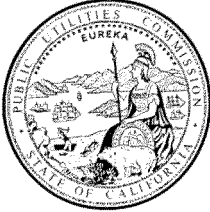


Docket: : I.11-02-016
Exhibit Number : _____
Commissioner : M. Florio
Admin. Law Judge : A. Yip-Kikugawa
Witness : J. Halligan



**CONSUMER PROTECTION AND SAFETY DIVISION
CALIFORNIA PUBLIC UTILITIES COMMISSION**

**REVISED REBUTTAL TESTIMONY
OF JULIE HALLIGAN**

I.11-02-016

San Francisco, California
August 20, 2012

1 **I. INTRODUCTION**

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

7 This testimony addresses four defenses that PG&E has raised in its testimony.
8 First, PG&E contends that other operators have deficient recordkeeping practices. This
9 contention is not a valid defense to the alleged violations of law. Second, PG&E argues
10 that there was no regulation requiring it to maintain certain records that are the subject of
11 alleged violations. However, under section 451 of the California Public Utilities Code,
12 CPSD expects PG&E and all Commission regulated gas utilities to use the best
13 engineering practices to promote the safety of their gas system. Natural gas transportation
14 is a hazardous activity, and CPSD expects gas utilities to use best engineering practices
15 available even without specific prescriptive laws or regulations mandating every
16 engineering practice that PG&E must undertake to keep its system safe. Third, PG&E’s
17 assertions that it has changed or is changing its recordkeeping practices since the San
18 Bruno tragedy have no bearing on whether PG&E violated the law previously. Fourth,
19 contrary to PG&E’s assertions, PG&E’s representations to the Commission were that
20 PG&E had complied with ASME Standard B31.8, which included a record retention
21 provision. Each of these topics is discussed below.

22 **II. OTHER GAS OPERATORS’ RECORD KEEPING PRACTICES**

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

25 PG&E’s assertions about others in the industry having as deficient recordkeeping
26 practices as PG&E are unproven and beyond the scope of this proceeding. PG&E’s

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

1 testimony is insufficient to establish whether the recordkeeping deficiencies of other
2 companies rise to the level of violations of law. PG&E’s testimony simply asserts that
3 gas transporters face “significant gas transmission records challenges in locating
4 records”.² PG&E also provides examples of industry challenges to locate records.³ A
5 record keeping “challenge” to the industry, however, does not establish that prevailing
6 industry practice is to keep records in violation of the law or in an unsafe manner. The
7 Commission’s recordkeeping investigation of PG&E is not designed to ascertain whether
8 any other utility in California or the nation has violated the law by its deficient
9 recordkeeping.

10 Second, stating examples of others in the industry practice is irrelevant to whether
11 PG&E’s recordkeeping practices have violated the law. CPSD and the Commission have
12 always determined violations of law based on the actions and omissions of the utility
13 under review based upon the specific facts involving the utility.

14 **III. OBLIGATION TO USE SAFE ENGINEERING PRACTICES**

15 **A. CPSD and the Commission Expect PG&E to Use the Best Engineering** 16 **Practices to Promote the Safety of Its System**

17 PG&E asserts or implies in its testimony that it did not violate any regulation
18 where none explicitly required certain record types to be retained or maintained in a
19 particular way or for a specified length of time.⁴ However, assuming for the sake of
20 argument, there were no regulations. PG&E must keep its gas transmission system safe,
21 regardless of specific directives to maintain data.⁵ CPSD expects all utilities to

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.”

1 understand and implement this requirement regardless of whether an explicit
2 recordkeeping or other safety requirement exists.

3 PG&E is a large and established public utility and is responsible for ensuring the
4 safety of its customers, employees, and the public. PG&E can only do so by exercising
5 the best engineering practices in compliance with Section 451 of the Public Utilities
6 Code. The transportation of gas through pipes is an activity that is hazardous to life and
7 health if good engineering practices are not exercised over the entire system. If safety
8 depends - as it does in some instances here – on maintaining recordkeeping that is not
9 explicitly mandated by regulation – CPSD expects PG&E to maintain the recordkeeping
10 needed to achieve safety. CPSD expects such from all utilities regardless of whether
11 explicit and specific recordkeeping requirements exist.

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

20 In PG&E’s response testimony, Mr. De Leon describes historic record keeping
21 requirements.⁶ In his own summary, he alleges that the GO 112 series record keeping
22 requirements became less prescriptive over time, and that federal regulators have not
23 imposed detailed recordkeeping standards.⁷ Assuming for the sake of argument, his
24 allegations were true, they would not negate CPSD’s view that PG&E has always had a
25 requirement to promote the safety of its own system, regardless of whether there are

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.

1 specific prescriptive requirements to do so.⁸ Therefore, any explicit prescriptive or
2 detailed record keeping requirements merely added to PG&E’s basic engineering and
3 legal duty to keep and maintain records to promote the safety of its system.

4 Mr. De Leon contends that “federal regulations have dealt pragmatically with the
5 challenge that gas operators may lack complete gas pipeline safety records.”⁹ However,
6 recognizing that some utilities “may lack complete gas pipeline safety records” does not
7 excuse the specific violations CPSD has identified.¹⁰ PG&E had and has a duty to
8 promote the safety of its system by properly maintaining and managing its records, so
9 that it can make the proper decision to protect the integrity of its pipelines.

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

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

16 “It is recognized that no code of safety rules, no matter how
17 carefully and well prepared, can be relied upon to guarantee
18 complete freedom from accidents. Moreover, the promulgation of
19 precautionary safety rules does not remove or minimize the primary
20 obligation and responsibility of respondents to provide safe service
21 and facilities in their gas operations. Officers and employees of the
22 respondents must continue to be ever conscious of the importance of
23 safe operating practices and facilities and of their obligation to the
24 public in that respect.”¹¹ (PG&E was one of the respondents in the
25 GO 112 proceeding.)
26

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.

¹⁰ Specific violations are identified in CPSD’s supplemental testimony, Dated March 30, 2012.

¹¹ California Public Utilities Commission Decision 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.

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

7 The Commission has confirmed that the Public Utilities Code Section 451
8 requirement to make utilities keep their systems safe is constitutional. In *Carey v. Pacific*
9 *Gas and Electric Company*, D.99-04-029 (1999), 85 CPUC 2d 682, 689, the Commission
10 specifically said:

11 “. . .it would be virtually impossible to draft Section 451 to
12 specifically set forth every conceivable service, instrumentality and
13 facility which might be defined as ‘reasonable’ and necessary to
14 promote the public safety. That the terms are incapable of precise
15 definition given the variety of circumstances likewise does not make
16 Section 451 void for vagueness, either on its face or in application to
17 the instant case. The terms ‘reasonable service, instrumentalities,
18 equipment and facilities’ are not without a definition, standard or
19 common understanding among utilities. . . Accordingly, Section
20 451's mandate that a utility provide "reasonable service,
21 instrumentalities, equipment and facilities" is not an
22 unconstitutionally vague standard with which to assess a fine or
23 penalty.”

24 **IV. PG&E'S FUTURE RECORDKEEPING**

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

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.

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

5 **V. PG&E SHOULD HAVE COMPLIED WITH ASME STANDARD B31.8 AS**
6 **IT REPRESENTED THE BEST INDUSTRY STANDARDS UNTIL IT WAS**
7 **MANDATED IN THE COMMISSION’S GENERAL ORDER NO. 112 IN**
8 **DECISION 61269**

9 The American Standards of Mechanical Engineers (ASME) is a set of industry
10 standards that have been followed by certain companies in the natural gas industry since
11 before 1956. The testimony of CPSD consultants has asserted PG&E did not follow
12 these standards. Through several witnesses, PG&E asserts that ASME Standard B31.8
13 does not set a legal requirement for PG&E to follow. One PG&E witness asserts,
14 “ASME does not carry the weight of law.”¹⁴ Another PG&E witness states “Using
15 ASME Standard B31.8 as an independent basis for asserting a regulatory violation does
16 not make any sense.”¹⁵ Until the Commission’s Decision 61269 mandated that California
17 natural gas utilities shall comply with ASME Standard B31.8 in the CPUC’s General
18 Order No. 112 (effective 1961), PG&E should have complied with ASME Standard
19 B31.8 as it represented the best industry standards prior to that time. In fact, PG&E
20 represented to the Commission that the company followed ASME standards for gas
21 transmission and distribution piping systems (ASME Standard B31.8). PG&E
22 represented this in 1955¹⁶ and all of the California natural gas utilities, including PG&E,
23 represented to the Commission in 1960 that they voluntarily complied with ASME

¹⁴ PG&E Testimony of Maura L. Dunn at Page MD-39.

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.

1 Standard B31.8.¹⁷ Consequently, since the ASME Standard B31.8 represented the best
2 accepted industry standards at that time, for violations prior to 1961, the Commission
3 should find that PG&E violated section 451 of the California Public Utilities Code.

4 CPSD agrees that since the compliance with ASME Standard B31.8 was mandated
5 in the Commission's General Order No. 112, that any *new* violation thereafter should
6 only count as a violation of the General Order, which may be a continuing violation.
7 This is true whether reference in CPSD's testimony is made to a violation of the ASME
8 Standard B31.8 or to General Order 112 through General Order 112-E.

9

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).