BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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.	Rulemaking 11-02-019 (Filed February 24, 2011)

DIVISION OF RATEPAYER ADVOCATES COMMENTS ON PROPOSED DECISION

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) files these Comments on the Proposed Decision (PD) of Administrative Law Judge (ALJ) Bushey, on the Pipeline Safety Implementation Plan (PSEP) Application filed by Pacific Gas and Electric Company (PG&E).

These comments focus on factual, legal, and technical errors in the PD that need to be corrected, as required by Rule 14.3. But before turning to those errors, DRA wants to state that there is much about the PD that is commendable. The PD properly:

- Disallows PG&E cost recovery for certain items, notably for records integration (PD at 57);
- Establishes a hard cap on costs based on PG&E's estimates (PD at 57);
- Reduces PG&E's return on equity for Phase 1 of the PSEP for 5 years (PD at 57);
- Disallows the large contingency that PG&E added to its cost estimates (PD at 100); and
- Makes any authorized rate increases subject to refund pending Commission decisions in the related San Bruno investigations (PD at OP 3).

These determinations appropriately allocate *some* of the PSEP costs to PG&E shareholders. PD at 57 and 100.

However, the PD still places far too much of the financial burden on PG&E's ratepayers. The PD reduces the budget for PSEP Phase 1 to $1.389 billion,[1] but makes ratepayers responsible for 88.5% of those costs.[2] As the PD acknowledges: "The [PSEP] represents a massive investment program funded largely by PG&E's ratepayers." PD at 88. The PD would require ratepayers to pay over $3.55 billion to PG&E over 65 years (including the return on equity, or profit, for PG&E's shareholders)[3] for Phase 1 of the PSEP, which is to be completed by 2014. PG&E estimates that Phase 2, to begin in 2015, will cost another $6.8 to $9 billion.[4]

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[1] PD at Table E-4, line 7.

[2] 88.5% is derived from Table E-4 of the PD by adding Line 7 under columns for years 2012, 2013, and 2014 and then dividing by $1,388.8 million. The sum result of $1,229.2 million is authorized to be recovered from ratepayers and is divided by the total cost of $1,388.8 million. The year 2011 is excluded from cost recovery since the footnote (a) of the Table indicates "PG&E did not request recovery of 2011 expenses from ratepayers. However the year 2011 is included in the Total authorized combined expense and capital shown in Table E-4 under the "Total" column. So, Table E-4 of the PD indicates that $1,388.8 million is the Total authorized combined expense and capital of the PG&E PSEP and authorizes the PSEP costs in years 2012 through 2014 to be recovered from ratepayers.

[3] The total cost of PSEP Phase 1 of $1.3888 billion over the entire asset life of 65 years comes to an

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Substantial evidence in the record of this proceeding supports a much larger disallowance. A mountain of additional evidence adduced in the related Enforcement Cases[5] stemming from the San Bruno explosion shows that PG&E's decades of mismanagement and putting profit over safety were root causes of the San Bruno explosion, and of the present unsafe conditions throughout PG&E's service territory.[6] Evidence has been submitted in the Enforcement Cases showing that PG&E violated for decades its legal obligation to operate its gas system safely pursuant to Public Utilities Code § 451,[7] Commission General Order (GO) 112, and various pipeline safety regulations.

State law requires the Commission to disallow rate increases to pay for extra costs resulting from a utility's unreasonable errors and omissions. §§ 451, 463. However, the PD sidesteps this requirement and rejects greater disallowances supported by the evidence and demanded by the intervenors. The PD lacks findings on the very material issue of PG&E's decades-long failure to maintain its gas system properly, notwithstanding substantial evidence in the record. Finally, the PD shies away from the Commission's obligation to disallow rate increases to pay costs resulting from PG&E's unreasonable errors and omissions by finding the requirement inapplicable here. The outcome -- the PD would have ratepayers absorb 88.5% of approved PSEP costs.

Given what is at stake -- public safety, huge costs to ratepayers and shareholders, and a pressing need to restore public confidence in PG&E and in this Commission -- the Commission's decision on PG&E's PSEP must be sound. The PD needs to be modified to address significant legal, factual, and technical errors, including modifications to:

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estimated total of $3.667 billion. Out of that, only the year 2011 will be borne by PG&E shareholders while the remaining PSEP costs of $3.55 billion from 2012 to the end of the asset life will be borne by PG&E's ratepayers.

[4] Ex. 149, DRA Testimony, Chap. 9, p. 2 & note 5. PG&E has not yet submitted a proposal for Phase 2.

[5] Order Instituting Investigation (OII) 12-01-007 (the San Bruno OII); OII 11-02-016 (the Record Keeping OII); OII 11-11-009 (the Classification OII). These three OIIs are referred to together as the "Enforcement Cases."

[6] See, e.g., Independent Review Panel report (IRP Report) at 5 ("the Panel concludes the explosion of the pipeline at San Bruno was a consequence of multiple weaknesses in PG&E's management and oversight of the safety of its gas transmission system available at http://www.cpuc.ca.gov/NR/rdonlyres/85E17CDA-7CE2-4D2D-93BA-B95D25CF98B2/0/cpucfinalreportrevised62411.pdf and National Transportation Safety Board Report (NTSB Report) at x-xii available at http://www.ntsb.gov/doclib/reports/2011/PAR1101.pdf. See also testimony submitted in the Enforcement Cases cited in note 5 below.

[7] Unless otherwise specified, all further section references are to the California Public Utilities Code.

- Correct errors in its calculation of hydro test and pipeline replacement costs, which will increase the disallowance by up to $183.4 million;[8]
- Modify elements of PG&E's decision tree analysis to result in the highest priority work being done first;
- Establish a process for an independent monitor to report to the Commission and the public regarding the status and quality of both PG&E's recording keeping and pipeline testing and replacement programs to ensure that PG&E develops accurate and useful record management systems and correctly tests and /or replaces the right pipelines at the right times;
- Add missing, but important, findings of fact and conclusions of law on material issues consistent with the discussion in the body of the PD; and
- Correct certain findings and conclusions.

To address these and other concerns, DRA recommends that the Commission's final decision include the changes set forth below and in Appendix A hereto.[9]

II. FACTUAL AND TECHNICAL ERRORS

A. The PD Contains Errors In Calculations of the Adopted Pipeline Program Budget

On November 2, 2012, 3 weeks after issuance of the PD, work papers supporting the calculations in the PD were circulated to the service list in this proceeding as "Late Filed" Exhibits ALJ-1 through 4. From the work papers, it appears that detailed calculations supporting the figures in Attachment E of the PD, and supporting the budget authorized by the PD, were prepared by PG&E using modified versions of the MS Excel work papers used to support its application.[10] DRA testified that those PG&E models had errors.[11] The PD's reliance on calculations generated by these faulty models propagates these errors and impedes the ability of the Commission and parties to evaluate essential calculations. If the Commission continues to

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[8] Tables 1 and 3 on pages 6 and 10 of these comments provide adjusted disallowances for hydrotest and pipeline replacement projects. The $184.4 disallowance is based on DRA's recommended treatment, which includes Hydrotest Scenario 3 and Replacement Scenario 6.

[9] DRA does not necessarily agree with the resolution of all matters not specifically mentioned. However, these Comments address only the areas in the Proposed Decision where there are legal, factual, or technical errors, or a need for clarification to ensure proper implementation of the PSEP.

[10] DRA assumes PG&E ran the models for the calculations the PD relies upon pursuant to the Assigned Commissioner Ruling Adopting Confidential Modeling Procedures dated July 19, 2012, because several PG&E employees signed the certificate assuring compliance with the protective order attached to that ruling. DRA was not asked to participate in or review the modeling results prior to issuance of the PD, which, as described herein, contains significant errors.

[11] Ex. 144, Amended Testimony of DRA Witness Roberts, p. 13.

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rely on PG&E's models, it should review the resulting calculations carefully and request that a non-PG&E party, such as DRA, perform a parallel review. The following discussions outline some of the most egregious errors in the modeling.

1. The Hydrotest Budget Should Be Recalculated To Correct Errors in PG&E's Modeling And To Be Consistent With The Cost Allocation Adopted By The PD

The PD's COL 15 states: "It is reasonable for shareholders to absorb the costs of pressure testing pipeline placed into service after January 1, 1956, or for which PG&E has no known installation date, and for which PG&E is unable to produce pressure test records." This finding is quantified as a disallowance of $73.9 million for hydrotest costs in the late filed Exhibit ALJ-1.[12] However, the $73.9 million disallowance is not consistent with the PD's COL 15 because PG&E's model used to calculate the disallowance excluded pipeline segments that should have been included in the disallowance.

DRA's testimony provided an extensive discussion of the cost estimation models PG&E used to generate its hydrotest and replacement cost requests, how these models allocated costs between PG&E shareholders and ratepayers, and how PG&E used a very narrow definition of incomplete records which minimized shareholder responsibility.[13] This testimony also described needed corrections to PG&E's cost allocation logic.[14]

As explained above, calculations supporting the PD were performed by PG&E using essentially the same models used to support its PSEP application. While modifications were made to account for findings in the PD, such as removing Allowance for Funds Used During Construction (AFUDC) and reducing the escalation rate, notwithstanding DRA raising this issue on the record, the cost allocation logic was not corrected, with the result that the model makes ratepayers responsible for hydrotest costs for pipe segments (1) missing installation dates; or (2) having a blank Maximum Allowable Operating Pressure (MAOP) validation field and a test

[12] Late filed exhibit ALJ-1, Table 3, summation of column titled "disallowed cost (post 55) & post 61 and 70" lines 1, 2, and 3 to 167.
[13] Ex. 144, Amended Testimony of DRA Witness Roberts, pp. 31-33 (data used in allocation discussed) and pp. 82-85 (allocation criteria discussed).
[14] Ex. 144, Amended Testimony of DRA Witness Roberts, pp. 85-87.

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pressure greater than zero. Illustrations of these errors are provided in DRA's summary work papers, attached hereto as Appendix B.[15]

Allocating to ratepayers costs for pipe that is missing an installation date contradicts COL 15, which explicitly assigns cost to PG&E where "PG&E has no known installation date."

COL 15 also expressly allocates to shareholders hydrotest costs for pipeline segments "for which PG&E is unable to produce pressure test records." However, PG&E's calculations, which the PD relies on, assumes that any database entry for a test pressure greater than zero constitutes a complete test record. This logic fails to incorporate the extensive work done in the MAOP validation process and is inconsistent with D.11-06-017, which requires that a pressure test record "include all elements required by the regulations in effect when the test was conducted. For pressure tests conducted prior to the effective date of General Order 112, one hour is the minimum acceptable duration for a pressure test." D.11-06-017 at 28-29, COL 3.

Thus, before relying on PG&E's model for any calculation of disallowances, PG&E's model must be updated to apply an appropriate cost allocation logic.

DRA has run its own calculations to address the errors in PG&E's modeling. First, DRA adjusted the streamlined model described in DRA's opening testimony to apply the cost allocation logic adopted by the PD.[16] This calibration run, referred to as "Scenario 1" in the table below, revealed that the PD's logic was incorrectly applied to at least one project, incorrectly allocating over $1 million to ratepayers.[17]

DRA then modified its recalibrated model from Scenario 1 to disallow segments with a blank installation date or MAOP validation, pursuant to the discussion above. These corrections resulted in a disallowance of $109.6 million. This is $35.7 million more than the PD disallowance of $73.9. This is "Scenario 2" in the table below.

DRA raised two additional issues in its opening testimony which were not corrected in the PG&E model and therefore result in errors in the calculations supporting the PD. First, costs for pipe sections with "partial" MAOP validation results are allocated to ratepayers. However, if

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[15] On November 16, 2012 ALJ Bushey authorized DRA, in a oral communication, to go up to 30 pages, including Appendix B.
[16] Ex. 144, Amended Testimony of DRA Witness Roberts, pp. 13-15.
[17] Late filed exhibit ALJ-1, Table 3, incorrectly allocates all of project L-002 to ratepayers, when 1,823 feet and $1,084,000 for segments 142.5, 184.26, and 184.3 should be disallowed since they were installed after 1955 and the MAOP status is "Incomplete."

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PG&E cannot account for every inch of a pipe segment, as is the situation for "Partial Mileage" segments, PG&E shareholders should bear the cost of bringing that segment into compliance.[18]

Second, many pipe segments installed prior to 1956 have a test date after this date, and have incomplete test records. The presence of a test date after 1955 indicates that a test was performed per industry standards,[19] and the PD correctly states that "no evidence has been presented to suggest that the cost of the 1956 to 1961 testing was excluded from revenue requirement." PD at 60. The PD states that "[t]he cost of such retesting is unreasonable because ratepayers funded the first test, and PG&E unreasonably failed to retain the records." PD at 56. DRA corrected these two errors in model run "Scenario 3," which increases the disallowance to $194.9 million, as shown in Table 1 below:

Table 1: DRA Modeling To Correct Errors in Hydrotest Disallowances

DRA Hydrotest Scenario	Basis of disallowance	Disallowed Footage	Disallowed Cost
A	Per PD, no AFUDC	588,333	$ 73,887,000
1	PD logic, no AFUDC, per DRA model[20]	590,156	$74,531,588
2	Same as Scenario #1, plus disallows a pipe segment if install date or MAOP validation blank	880,373	$109,622,936
3	Same as Scenario #2, plus disallow segments with "partial" MAOP validation and segments with a test date after 1955	1,660,897	$ 194,910,621

The PD should adopt the $194.9 million disallowance in DRA's Scenario 3 to be consistent with both the text of the PD and D.11-06-017. The disallowed costs above are aggregate figures for 2011-2014.[21] The disallowed costs in this table must be disaggregated into annual figures, adjusted for the PD's treatment of 2011 and 2012 costs, and run through PG&E's

[18] Ex. 144, Amended Testimony of DRA Witness Roberts, p. 87.
[19] DRA Opening Brief at 18
[20] See footnote 17.
[21] The PD at 80-81 has expensed replacement of segments less than 50 feet long. However, DRA has not reviewed the calculations to determine whether this determination has been incorporated into late-filed Exhibit ALJ-1 calculations.

Results of Operations (RO) model to determine the final adjusted revenue requirement. DRA can assist Commission staff with these calculations to support an accurate final decision.

2. The Pipeline Replacement Budget Should Be Recalculated To Correct Errors in PG&E's Modeling And To Be Consistent With The Cost Allocation Adopted By The PD

The PD disallows portions of PG&E's requested pipeline replacement costs where pressure test records are incomplete for pipelines installed after 1955. Rather than disallow all replacement costs as recommended by DRA, the PD reduces the requested replacement costs "only to the extent the replacement costs exceed the estimated cost of pressure testing the segment." PD at 63. While DRA continues to support its initial position for full disallowance, the following discussions address errors based on the PD's method of calculating replacement cost disallowances, and provides adjustments to remedy these errors.

a) The cost allocation logic used to calculate the pipeline replacement budget is not consistent with the text of the PD or with prior Commission decisions

The PD disallows a portion of the replacement costs for 172,264 feet of pipe, out of the total 979,436 feet (185.5 miles) proposed by PG&E for replacement.[22] The errors in cost allocation logic discussed in Section II.A.1 above for hydrotest projects are equally applicable for determining the disallowance for pipeline replacement projects.[23]

As with hydrotest cost disallowance adjustments, DRA used its streamlined cost estimating model to first confirm the logic used in the calculations supporting the PD, and then to correct the logical errors which were found. MS Excel work papers were prepared for each of the following scenarios:

1. Scenario 1 reflects a calibration run using PG&E's cost allocation logic as used to support the PD. This run resulted in exactly the same disallowed footage and costs used in the PD.

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[22] Late filed exhibit ALJ-1, Table 2, line 74, summation of columns titled "Total Footage" and "Disallowed Footage."

[23] For replacement projects, the logic used to allocate the costs for pipe segments without a MAOP validation status is even more flawed. For hydrotest projects, PG&E's allocation logic checked for a test pressure greater than zero if the MAOP validations status was blank, which added an extra but incomplete additional check of whether a test was performed. PG&E's allocation logic for replacement projects does not perform this additional step.

2. Scenario 2 allocates the cost of pipe sections lacking an installation date or a MAOP validation entry to shareholders. Correcting this error increases the disallowed footage to 273,867 feet.
3. Scenario 3 builds on Scenario 2 by allocating segments with partial MAOP validation or a test date after 1955 to PG&E shareholders, which increases the disallowance to 450,467 feet.

Table 2, below, summarizes the disallowed footages and costs of these three scenarios:

Table 2: DRA Modeling To Correct Errors in Pipeline Replacement Disallowances

DRA Replacement Scenario	Cost model	Basis of disallowance	Disallowed Footage	Disallowed Cost	Calculated disallowance per foot
1	PD fixed $95.8/ft	Per PG&E/PD, calculation logic	172,264	$6,502,891	$95.80
2	PD fixed $95.8/ft	Same as DRA Hydrotest Scenario 2	273,867	$26,236,459	$95.80
3	PD fixed $95.8/ft	Same as DRA Hydrotest Scenario 3	450,467	$ 43,154,739	$95.80

Using the PD's partial cost disallowance methodology, Scenario 3 results in a disallowance of $43.2 million. This is $26.7 million more than the disallowance calculated using PG&E's faulty model. However, the PD's disallowance methodology also included a flawed estimate of hydrotest costs, as discussed below.

b) The PD uses an overly simplistic method to estimate disallowed hydrotest costs, which results in excessive pipe replacement costs

The PD calculates the disallowance for each replacement project as the product of "disallowed footage" and a constant cost of $95.80 per foot,[24] resulting in a total disallowance for 168 replacement projects of $16.5 million.[25] The PD's $95.80 per foot estimated cost of pressure testing is based on a *program-level* average from PG&E's proposed hydrotest program,

[24] Late filed exhibit ALJ-1, Table 2, column titled "cost of disallowed footage equivalent hydro (ave test $98.5/ft)."

[25] Late filed exhibit ALJ-1, Table 2 shows a total for the column titled "cost of disallowed footage equivalent hydro (ave test $98.5/ft)" in "Line #" 171 of $9.7 million. This value is incorrect, and is actually the total disallowance PG&E claimed in the application for pipes older than 1970 without test records.

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less AFUDC, as described in greater detail in Appendix B.[26] This simplistic method is inaccurate and leads to unnecessarily excessive pipeline replacement costs because:

- Hydrotest costs per foot are inversely proportional to project or test section length, and are much higher than $95.80 per foot for "short" pipes;
- The average length of pipes in pipeline replacement projects is nearly 17 times shorter than in the hydrotest projects, which were used to establish the $95.80 per foot estimate used in the PD; and
- The cost per foot can be accurately calculated as a function of test project length with minimal additional effort.

Appendix B describes each of these concerns in detail, and provides a more accurate method to estimate costs by calculating a unique hydrotest cost per foot for each pipeline replacement project in which segments were disallowed on the basis of incomplete test records. DRA then re-ran each of the three scenarios described above, using the variable hydrotest costs generated by DRA's method. Table 3, below, compares all six pipe replacement scenarios calculated by DRA.[27]

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[26] *See* late filed exhibit ALJ-1, Table 3. Total value of "Gross project cost…. with AFUDC removed" of $396.1 million, divided by "Total Project Footage" of 4,134,487 feet. These summations, which should be shown in Line 168 of the table, were added by DRA.

[27] This table shows a calculated disallowance per foot which is the aggregate disallowed cost shown divided by the disallowed footage. For Scenarios 4-6 the actual cost per foot used is described in Appendix B.

Table 3: DRA Modeling To Correct Errors in Pipeline Replacement Disallowances and Adjust For Proper Hydrotest Costs

DRA Replacement Scenario	Cost model	Basis of disallowance	Disallowed Footage	Disallowed Cost	Calculated disallowance per foot
1	PD fixed $95.8/ft	Per PG&E/PD, calculation logic	172,264	$6,502,891	$95.80
2	PD fixed $95.8/ft	Same as DRA Hydrotest Scenario 2	273,867	$26,236,459	$95.80
3	PD fixed $95.8/ft	Same as DRA Hydrotest Scenario 3	450,467	$ 43,154,739	$95.80
4	DRA variable	Per PG&E/PD, calculation logic	172,264	$ 32,359,504	$ 187.85
5	DRA variable	Same as DRA Hydrotest Scenario 2	273,867	$ 56,324,500	$205.66
6	DRA variable	Same as DRA Hydrotest Scenario 3	450,467	$ 78,803,421	$174.94

Scenario 1 corresponds to the PD calculations performed by PG&E, while Scenario 6 represents the most accurate quantification of the cost allocation criteria adopted by the PD and prior Commission directives. In sum, the PD should be corrected so that the disallowance for pipeline replacement is $78.8 million - $62.3 million more than the PD currently provides. These disallowed costs include both disallowed capital costs and expenses for 2011-2014.[28] The disallowed costs in Table 3 must be disaggregated into annual figures, corrected for costs for 50 foot or shorter pipes that were expensed per the PD, adjusted for the PD's treatment of 2011 and 2012 costs, and run through PG&E's Results of Operations model to determine the final adjusted revenue requirement. DRA can assist Commission staff with these calculations to support an accurate final decision.

[28] The PD at 80-81 has expensed replacement of segments less than 50 feet long. However, DRA has not reviewed the calculations to determine whether this determination has been incorporated into late-filed Exhibit ALJ-1 calculations.

B. The PD Fails To Modify PG&E's Decision Tree To Ensure Certain Priority Work Is Done Sooner

The PD is silent on the recommendation by TURN and DRA engineering experts to eliminate decision tree point "2F" and to instead replace certain line segments to ensure a lower risk of pipe failures due to construction defects.[29] Under point 2F, if a segment with a construction defect has a hydrotest record, that segment would be moved to section 3 of the decision tree, which either delays mitigation or applies less stringent mitigation. However, a hydro test record is not an accurate means of determining the safety of a segment with a construction defect. As TURN's expert testified: "Hydrotesting is not the most effective assessment tool to test girth welds and other connections because of the lower hoop stresses."[30] DRA's expert independently concluded that "a hydrostatic test is not well suited for evaluating the condition of these features" and recommended removing the Subpart J query.[31] The PD should reconsider this modification even though it will increase overall PSEP costs because it properly prioritizes pipeline replacement work needed to ensure public safety.

C. The PD Is Internally Inconsistent on The Treatment of Class 1 and 2 Segments in Phase 1

The PD approves "pressure testing of 783 miles of pipeline, replacement of 186 miles of pipeline,…, and upgrades to 199 miles of pipeline to allow for in-line inspection." PD at 3. These are the same lengths of pipeline proposed by PG&E, including all the Class 1 and 2 segments slated for Phase 1 mitigation.[32] This wholesale acceptance of PG&E's proposed scope is inconsistent with D.11-06-017 and evidence provided by DRA. The PD correctly acknowledges that PG&E should "start with pipeline segments in Class 3 and 4 locations" and provided a reasonable guiding principal that "the general rule is that pipeline segments in Class 1 or 2 locations will not be included in Phase 1." PD at 69. The PD continues by stating that exceptions should be made "for sound engineering and economic reasons" *Id.* However, the PD then errs by approving PG&E's plan wholesale, without modification, because PG&E provided no engineering or economic analysis to support its inclusion of certain Class 1 and 2 segments in the Plan. In contrast, DRA showed that PG&E included many more segments in Class 1 and 2

[29] Ex. 145, Testimony of David Rondinone, p.12.
[30] Ex. 131, Testimony of Richard Kuprewicz, p.22.
[31] Ex. 145, Testimony of David Rondinone, p.12.
[32] Ex. 2, PG&E Direct Testimony, p. 3-22, line 29; p.3-26, line 17; p. 3-29, line 27.

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locations than were "adjacent" to higher priority segments,[33] and that *replacing* segments in Class 1 and 2 locations would generally not be economically efficient.[34] Further, because PG&E's fixed hydrotest test costs are so inflated, the additional variable cost to add segments is understated, thus resulting in the inclusion of even more Class 2 segments than should otherwise occur.[35]

The PD also fails to acknowledge that prioritizing segments per D.11-06-017 (with Class 3 and 4 segments first) could lead to a reduction in mitigation costs, should the Commission find at a later date that new in line inspection techniques offer adequate safety at lower cost.[36] If the Commission erroneously adopts PG&E's default inclusion of Class 1 and 2 segments in Phase 1, the PD should specify that PG&E's quarterly reports include the "sound engineering and economic reasons" required by the PD for including each segment in Phase 1, with a potential for disallowance if adequate justification is not provided.

D. The PD Fails To Address Cost Recovery For Replaced Pipes

The PD fails to address the issue of cost recovery for the remaining balance of old pipes being replaced under the PSEP. The PD only requires PG&E to report on "the disposition (e.g., sold) of replaced pipe and other material." PD, Attachment D at # 10. This treatment does not appear to prevent PG&E from continuing to earn a rate of return on old pipes, which are no longer "used and useful." PG&E should not continue to receive any rate of return on the unrecovered balance of the old pipelines subject to replacement.[37] The PD should be modified to require PG&E to: (1) identify all the amounts earned from the disposition of the pipe material and its costs incurred to transport or dispose of the material: and (2) remove from rate base all of the unrecovered balance of the old pipelines subject to replacement.

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[33] Ex. 144, Amended Testimony of DRA Witness Roberts, p.40.
[34] Ex. 144, Amended Testimony of DRA Witness Roberts, pp.46-48.
[35] DRA also found that the Sempra Utilities' "range [of estimated hydrotest costs per foot] is lower compared to PG&E [$125,000 to $517,000 per test project] since Sempra's fixed costs are significantly lower." *See* A.11-11-002, Opening Testimony of DRA Witness Roberts, p.III-8, lines 3-8. DRA requests that the Commission take official notice of this testimony in the instant proceeding. The Sempra Utilities' PSEP was originally within the scope of this proceeding but was transferred to A.11-11-002. *See* Assigned Commissioner's Ruling of December 21, 2011, in R.11-02-019 and A.11-11-002.
[36] DRA Opening Brief at 61-62.
[37] Ex. 149, DRA Testimony, Chap. 9, p. 43.

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E. The Authorized Revenue Requirement Must Be Corrected Based On The Date of Issuance of the Final Decision

The PD correctly finds PG&E may not recover any revenue requirement for costs incurred prior to the effective date of the Decision. PD at 84. The PD then concludes that PG&E is entitled to $14 million in increased revenue requirement for 2012. PD at OP 2. The $14 million assumes a final Commission decision on PG&E's PSEP in October 2012.[38] A Commission decision on this matter will almost certainly not be issued before December 20, 2012, at the earliest. The PD should be modified to provide no revenue requirement to PG&E for 2012.

III. THE IMPLEMENTATION AND OVERSIGHT PROVISIONS OF THE PD ARE INADEQUATE

A. The Final Decision Should Establish a Process for Determining the Priority and Scope of Pipeline Segments During Ongoing Engineering Analysis

The PD correctly finds that PG&E's Implementation Plan is merely the first step towards "developing a coherent engineering-based analysis and decision-making process for pipeline safety improvement." PD at 48 and FOF 6. The PD also recognizes that "[n]ew safety engineering information may provide the analytical foundation for revising priorities." PD at 86. But the PD then errs in finding that changes to the Implementation Plan do not warrant any type of Commission review: "We find that improvements, efficiencies, and adjustments to the Implementation Plan based on sound engineering data and that further [] the objectives of the Plan are within the scope of the Plan and do not require further Commission review." PD at 86.

DRA has shown that the Plan's scope is not accurately and completely defined, and that it should be corrected and updated through a transparent process with clearly defined criteria.[39] Among other things, the Plan fails to provide criteria for increasing the scope and cost,[40] and it fails to prioritize certain line segment replacements that are necessary to public safety.[41] The compliance filings described in Attachment D to the PD could provide a framework for correcting the errors in PG&E's Plan and ensuring proper prioritization of the Plan's work.

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[38] PD Attachment E, Table E-1, Line 4.
[39] DRA Opening Brief at 51-57 and 66.
[40] DRA Opening Brief at 62-66.
[41] DRA Opening Brief at 55-57. DRA's proposal to omit Decision Point 2F results in increased replacements, and overall PSEP costs, but greater public safety.

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To this end, the PD should be modified to (1) require PG&E to update its Decision Tree to incorporate the most current data available as of the effective date of this decision, and (2) require PG&E to make an "initial" Attachment D filing within 45 days of the effective date of the Decision to describe how it performed the update, the results of the update, and to establish criteria for changing the priorities among projects going forward. This filing should include protocols and procedures to ensure uniform treatment across all PG&E engineering groups, per previous DRA recommendations.[42] It should also include a hydrotest water management plan, based on DRA's analysis of the cost drivers of the Sempra Utilities' PSEP.[43] This approach would be consistent with the PD's inclination to provide an opportunity for some type of project review. See PD at 88 ("At this time, we are not prepared to grant DRA and TURN's request [for after-the-fact reasonableness review], but we are equally not inclined to foreclose any type of post-construction review.")

B. The PD Should Require an Independent Monitor to Oversee PG&E's PSEP Implementation

Given PG&E's decades of gas system mismanagement, there is a need for ongoing oversight of PSEP implementation – including both the record keeping and the pipeline testing and replacement components. The PD would delegate authority to the Director of CPSD, or his/her designee, to oversee all of PG&E's PSEP work. PD at 121, FOF 30 and OP 8. However, the Independent Review Panel Report identified the Commission's failure to oversee PG&E's gas operations effectively and opined that the Commission as well as PG&E "must confront and change elements of their respective cultures to assure the citizens of California that public safety is the foremost priority."[44] The NTSB report found that the Commission's "failure to detect the inadequacies of PG&E's pipeline integrity management program" contributed to the San Bruno Explosion.[45]

To restore public confidence in the Commission's ability to supervise PG&E, and to provide the expertise necessary to ensure that PG&E's PSEP is implemented in a timely and

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[42] DRA Opening Brief at 66 provides a list of the requested protocols and procedures.
[43] DRA found that 70% of Sempra's estimated hydrotest costs were driven by water supply, handling, and disposal costs, and recommended that Sempra provide a two –part water management plan. See A.11-11-002, Opening Testimony of DRA Witness Roberts, p.III-11, lines 6-7 and pages V-28 to V-29.
[44] IRP Report at 8 and 18-22.
[45] NTSB Report at xii.

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competent manner, the Commission should establish a PSEP oversight process that employs independent monitors who report publicly on their findings until the Commission has found that Phase 1 of the PSEP has been successfully implemented. It is not uncommon for such independent monitors to be employed in response to destructive oil and gas pipeline incidents, including the 2006 British Petroleum oil spills in Alaska[46] and the 1999 rupture of a Shell and Olympic Oil Company pipeline.[47] An independent monitor with expertise in risk assessment, pipeline integrity management, and data management systems was employed to review the implementation of remedial plans agreed to by El Paso Natural Gas Company as part of a 2007 Consent Decree resolving an action brought by the federal government against the company after a pipeline explosion that killed twelve people.[48]

To establish an independent monitor process, the PD should direct the parties to meet and confer and, if possible, file joint comments proposing an independent monitor process acceptable to the majority of them. At a minimum, the PD should require the parties' joint proposal to include these elements:

- A hiring process for the independent monitors that ensures their independence, to the extent practicable;
- PG&E will hire and pay for the independent monitors;
- The independent monitors will conduct and present all analyses and recommendations independently of any suggestions or conclusions of PG&E, the Commission, or interested parties;
- Quarterly public reporting by the independent monitors to a joint meeting of PG&E, the Commission, and interested parties;
- The independent monitors will notify PG&E, the Commission, and interested parties in writing within 10 days of discovery of any potential non-compliance with the requirements of the PSEP or presents a potential, but not immediate, threat to public safety;
- The independent monitors will notify PG&E, the Commission, and interested parties in writing within 24 hours of any condition that poses a potential and immediate threat to public safety; and

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[46] See pp. 30-31 of British Petroleum's consent decree with the U.S. Environmental Protection Agency at http://www.epa.gov/compliance/resources/decrees/civil/cwa/bpnorthslope-cd.pdf.
[47] See http://www.epa.gov/compliance/resources/cases/civil/cwa/olympicshell.html.
[48] Consent Decree in US v El Paso Natural Gas Co. (Dist. Ct. New Mexico) at 12 and *et seq.*, available at http://emerginglitigation.shb.com/Portals/f81bfc4f-cc59-46fe-9ed5-7795e6eea5b5/r_El_Paso_Natural_Gas_Consent_DecreeFinal.pdf

- PG&E's contracts with independent monitors shall prohibit an independent monitor from seeking work from PG&E while performing the duties of a PSEP independent monitor.

DRA's proposed revisions to COL 30 and OP 8 are set forth in Appendix A.

IV. THE PD COMMITS LEGAL ERROR

A. The PD Misconstrues Public Utilities Code § 463

Section 463 is a fairly straightforward statute – the Commission shall disallow direct and indirect expenses related to the unreasonable errors or omissions of a utility costing more than $50 million. Enacted in 1985 in response to huge cost overruns at the Diablo Canyon Nuclear Power Plant, it expressly states that it is a clarification -- not a change -- of then existing law on the Commission's ratemaking authority. §463(a). The Commission has relied upon § 463 explicitly (or on its general ratemaking authority without explicit reference to§ 463) to disallow requests for costs resulting from unreasonable utility errors and omissions.[49] The PD declines to do so here based on a misconstruction of § 463.

A gas utility is required to operate its system in a safe manner at all times (§ 451) and PG&E's rates have been set for decades at a level adequate to maintain safe operations.[50] It is now crystal-clear, based on substantial unrebutted evidence, that the PSEP is needed because of PG&E's decades of mismanagement and neglect of its gas transmission pipeline system.[51] There should be no question that pursuant to § 463 (which, as noted above, merely clarified § 451), the

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[49] Southern California Edison Company, D. 86-10-069, 22 CPUC 2d 124 (SONGS Units 2 & 3 disallowance) as modified by D.87-11-018, 1987 Cal. PUC LEXIS 343, * 11 (New Finding 127 is added to read: "Pursuant to Public Utilities Code Section 463, the Commission finds that all costs reflecting any unreasonable errors or omissions of Applicants relating to the planning or construction of SONGS 2 and 3 have been disallowed, to the extent the record in this proceeding warrants." Conclusion of Law 33 is modified to read: "If we determine that a utility's imprudent acts require the disallowance of specific direct costs related to those acts, then the utility's imprudence also requires the disallowance of indirect costs associated with those specific direct costs." Conclusion of Law 34 is modified to read: "Under the circumstances of this case, where the record was not developed in such a way as to allow discrete calculation of the reasonableness of specific indirect costs, it is within the Commission's discretion to adopt an equitable solution to this problem."). See also Pacific Gas and Electric Company, D.85-08-102, 18 CPUC 2d 700 (Helms disallowance); Pacific Gas and Electric Company, D.98-11-067, 83 CPUC 2d 208 ($100 million Diablo disallowance); Southern California Edison Company, D.94-03-048, 53 CPUC 2d 452 (Mojave disallowance); and Southern California Edison Company, D.85-03-087, 17 CPUC 2d 470 (SONGS Unit 1 disallowance).

[50] 9 RT 959-960, Bottorff/PG&E.

[51] DRA Opening Brief at 5-6, 8, and 41-49; TURN Opening Brief at 1-4, and 69-107.

Commission must disallow all PSEP costs, direct or indirect, associated with PG&E's errors or omissions in the operation of its gas system.

But instead of applying § 463 to disallow such costs, as the law requires, the PD concludes that § 463 does not apply unless there is a showing that ratepayers previously paid for the activities that PG&E did not perform.[52] This conclusion is clearly incorrect. The plain language of § 463 requires no such showing.

Having concluded that § 463 is inapplicable, the PD disregards most of the evidence presented regarding PG&E's errors and omissions. This too constitutes legal error. Section 463 *requires* the Commission to *at least consider* the evidence of errors and omissions. Furthermore, if it finds that unreasonable errors and omissions resulted in added costs, it must disallow the both direct and indirect costs

The PD's rationale for holding § 463 inapplicable is difficult to follow:

> … PG&E's ratepayers have not been subject to unreasonable costs; rather, as a result of needed but not performed safety improvement projects, ratepayers ended up paying rates lower than may have been reasonable due to the absence of the needed projects. The public utility code standards for rate recovery, i.e., just and reasonable, and the disallowance concept reflected in § 463 do not combine to provide an analytical basis for disallowing reasonable costs on the basis that the utility should have made the expenditures at an earlier date.

PD at 55.[53] The PD explains that while the Commission disallowed certain expenses associated with a 1985 accident at the Mohave Power Plant, the Commission surely would not have disallowed safety improvements under § 463 to a hypothetical second plant like Mojave. PD at 55-56, note 44. Thus, the PD relies upon a hypothetical example, and speculates regarding the Commission's resolution of that hypothetical, to shore up its improper interpretation of § 463,

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[52] The PD disallows certain expenses proposed in PG&E's PSEP, but only on the basis that the proposed expenses are "unreasonable" pursuant to § 451 and it only disallows "direct" expenses.

[53] The PD makes a nearly identical argument in rejecting the TURN and CCSF proposals that § 463 requires disallowance of certain pipeline replacement costs. The PD ignores the fact that ratepayers paid for the defunct Integrity Management Program which resulted in lines not being replaced sooner: "For ratemaking purposes … it is not clear how PG&E's failure to perform certain types of pipeline assessment in the past, even if an imprudent decision, justifies disallowing ratemaking recovery for the currently proposed pipeline assessment. TURN is not arguing that PG&E obtain ratepayer funding for the more expensive pressure testing, but opted instead to actually perform less-expensive direct assessment. Delay in implementing needed safety expenditures does not render the current expenditures imprudent and thus subject to disallowance, as we have set forth in detail previously."

which converts § 463 into a refund statute requiring proof that ratepayers previously paid for the work associated with a utility error or omission.

Under the PD's logic, § 463 does not apply unless opponents to a rate increase affirmatively demonstrate that the utility previously received money in rates to perform the errors or omissions, but did not make the expenditures. That is not what the statute says. Furthermore, the PD shifts the burden of proof from the utility to the parties opposing the rate increase. Even if one accepted the PD's improper application of § 463, PG&E fails to show that it *didn't* didn't expend funds on inappropriate and ineffective safety measures and thus wasted ratepayer money in the process. To the contrary, DRA has shown that PG&E maintained a wholly ineffective integrity management system to repair and replace pipelines for decades and that "[a]ll of PG&E's integrity management work – over nearly three decades – has been funded by ratepayers through rates."[54]

The PD's reliance on *Mohave* (D.94-03-048) is misplaced. That decision expressly affirmed SCE's obligation to meet the clear and convincing evidence standard and disallowed the expenses in that case because, among other things, SCE had failed to keep critical operational records, and because it should have known from operations at a sister plant to Mohave that there were problems with its operation of Mohave. The PD's suggestion that the Commission would (hypothetically) allow expenditures disallowed at Mohave for that sister plant has no basis in either fact or law.

Hypothetical Commission decisions notwithstanding, the PD commits legal error by misconstruing § 463, and ignoring the plain language of the statute and actual Commission decisions interpreting it. First, nothing in § 463 contemplates an inquiry into past rates to determine if ratepayers "ended up paying rates lower than may have been reasonable due to the absence of the needed projects." Second, such a requirement would shift the burden of proof away from the utility in violation of §§ 451 and 454, and the holding in *Mohave*. Third, no other Commission decision approving a disallowance, whether under § 463 or otherwise, has required such a showing.[55] Fourth, even if there were such a requirement for § 463 to apply, nothing in the record supports the PD's conclusion that ratepayers paid lower rates as a result of PG&E's

[54] DRA Opening Brief at 36; *see also* 35-39.
[55] See note 15, above; see e.g., So Cal Gas, D.93-12-043, 1993 Cal. PUC LEXIS 728, *70 ("… Public Utilities (PU) Code Section 463 requires that we disallow any unreasonable costs of construction for projects which cost more than $ 50 million.")

errors and omissions. To the contrary, the uncontroverted record shows that PG&E's gas transmission and storage operations have been very profitable over more than a decade.[56] Since 1998, PG&E's revenues are estimated to have exceeded the amount needed to earn its authorized rate-of-return by $430 million.[57] The record also shows that PG&E's errors and omissions are the result of a corporate culture that valued profits over safety – and PG&E made a conscious decision to limit investment in pipeline safety, notwithstanding the fact that it collected rates sufficient to maintain a safe system. Thus, ratepayers presumably *did* pay for work PG&E never did. But even if that question remains unanswered, the Commission is required to apply § 463 to disallow both direct and indirect costs resulting from those unreasonable errors and omissions. No showing that ratepayers have already paid those costs is required for § 463 to apply.

In sum, the PD seeks to constrain § 463 so that it may only be applied in very narrow circumstances. There is no legal or factual basis for the PD's interpretation.

B. The PD Fails To Separately State Findings Of Fact and Conclusions Of Law On Material Issues

Section 311 requires that Commission decisions set forth "recommendations, findings, and conclusions." Section 1705 requires that Commission decisions contain "separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[58] Section 1757 requires that the findings in Commission decisions be "supported by substantial evidence in light of the whole record."

The PD contains a number of findings of fact and conclusions of law material to the decision that are stated in the body of the PD, but not "separately stated" in the PD's Findings of Fact (FOF) and Conclusions of Law (COL). These missing findings and conclusions are identified in Appendix A and a citation to the supporting text of the PD is provided for most of them.

The PD also makes some findings of fact that are not "supported by substantial evidence in light of the whole record" and/or are internally inconsistent. For example, the PD finds

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[56] DRA Opening Brief at 13-15.

[57] Ex. 42, "Focused Audit of Pacific Gas and Electric Gas Transmission Pipeline Safety-Related Expenditures for the Period 1996 to 2010" by Overland Consulting, dated December 30, 2011, p. 1-1 (Overland Report).

[58] See Cal. Motor Transport Co., 59 Cal. 2d 270 (1963); and Associated Freight Lines v. Pub. Utils. Comm., 59 Cal. 2d 583 (1963).

PG&E's pressure test cost estimates to be "much higher than industry-based estimates [and] more than triple DRA's" (PD at 65) yet concludes that PG&E's proposed costs are "reasonable". Appendix A identifies corrections to the FOF, COL and OPs necessary to address these types of errors.

C. Burden of Proof

1. The PD Applies The Wrong Standard For The Burden Of Proof

PG&E bears the burden of showing that its proposed costs and revenue requirements (ratepayer funding) for the PSEP, which are enormous, are just and reasonable.[59] "Intervenors do not have the burden of proving the unreasonableness of [the utility's] showing."[60]

The question is what standard applies to this burden of proof. Must PG&E meet the burden with "clear and convincing evidence" or only a "preponderance of the evidence" as the PD suggests? PD at 42. Generally, the preponderance of the evidence standard requires a party to have more weighty evidence on its side than there is on the other side. The clear and convincing standard is more stringent, requiring evidence "so clear as to leave no substantial doubt…"[61]

The PD commits legal error by adopting the less stringent preponderance of the evidence standard in this rate case. The PD cites to D.08-12-058 (Sunrise) in support (PD at 42 and note 32), but its reliance on Sunrise is misplaced. Sunrise noted that the utility in that case argued that the clear and convincing standard applies to rate cases (D.08-12-058 at 18), but adopted the preponderance of the evidence standard because Sunrise was *not* a rate case. Sunrise approved an application for a certificate of public convenience and necessity (CPCN) and no one could show that the clear and convincing standard had ever been applied to CPCN applications. *Id.*

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[59] Section 454 requires that PG&E bear the burden of demonstrating that its new rates are justified before they may be charged to customers:

> … no public utility shall change any rate … as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified….

Section 451 requires that PG&E's rates be just and reasonable and finds that unjust or unreasonable rates are unlawful:

> All charges demanded or received by any public utility … shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity is unlawful.

[60] D.06-05-016 at 7; PD similar at 42.

[61] Conservatorship of Wendland, 26 Cal.4th 519, 552 (2001 as quoted in D.09-07-024 at 3.

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Thus, Sunrise applied the "default" standard for civil and administrative litigation. *Id.* at 19. For a rate case, even the utility in *Sunrise* acknowledged that the clear and convincing standard applied. This is consistent with due process and long-established Commission precedent.

The Commission has repeatedly stated that utilities must justify costs and rate increases by clear and convincing evidence. For example, D.94-03-048, disallowing certain Mojave-related expenses, reiterated the rule from prior CPUC decisions, relying on a 1983 decision:

> In D.83-05-036, 11 CPUC2d 474, [footnote omitted] we explained:
>
> "the fundamental principle involving public utilities and their regulation by governmental authority is that the burden rests *heavily* upon a utility to prove it is entitled to rate relief and not upon the Commission, its staff or any interested party . . . to prove the contrary. Unless SCE meets the burden of proving, *with clear and convincing evidence*, the reasonableness of all the expenses it seeks to have reflected in rate adjustments, those costs will be disallowed."[62]

The Commission conducted an historical review of the applicable standard for PG&E's 1999 general rate case (GRC). D.00-02-046, 2000 WL 289723 (Cal. P.U.C) (February 17, 2000) at § 4.2.2, "Burden of Proof and Evidentiary Standard." That decision concluded that, since at least 1952, the Commission required that "[t]he utility seeking an increase in rates has the burden of showing by clear and convincing evidence that it is entitled to such increase. The presumption is that the existing rates are reasonable and lawful." *Id.* This standard was adopted in that GRC and affirmed on rehearing in D.01-10-031, which modified PG&E's GRC decision to make this point even clearer.[63]

Notably, the Commission has recently deviated from the clear and convincing standard in at least two rate cases: the 2009 Southern California Edison Company (SCE) GRC and PG&E's 2012 GRC. The SCE GRC gave no explanation for the change in standard, and no citations were provided. D.09-03-025 at 8. The PG&E GRC decision relied on the "default" standard articulated in the Evidence Code, with no explanation of why the Commission would deviate from long-standing precedent of applying a higher standard for rate cases (D.11-05-018 at 68-69), especially given that the Evidence Code does not apply to Commission proceedings. *See* § 1701 (technical

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[62] D.94-03-048, 53 CPUC 2d 700, 1994 Cal. PUC LEXIS 216, *35, quoting D.83-05-036, 11 CPUC2d 474 (citations omitted; emphases added).

[63] Order Granting Rehearing of and Modifying Decision 00-02-046 (2001), D.01-10-031, 2001 Cal LEXIS 917 *5-6.

rules of evidence need not be applied) and Commission Rule of Practice and Procedure 13.6. It is legal error for the Commission to change the long-standing standard of proof for rate cases without any rationale particularly when the due process and information imbalance concerns embedded in the Commission's reliance on the higher standard have been articulated in prior Commission decisions. *See, e.g.,* D.00-02-046 at § 4.2.2. It is also legal error for the Commission to continually move the ball on the standard of proof issue. Among other things, both are violations of due process. Rather than perpetuate this error, the Commission should affirm, consistent with a long line of cases, that the proper standard of proof for review of proposed rate increases is clear and convincing evidence, and apply that standard to this Application.

2. In Finding PG&E's Cost Estimates Reasonable, the PD Improperly Shifts the Burden Of Proof To Those Opposing The Rate Increases

The PD acknowledges that "PG&E's pressure test cost forecasts are more than triple DRA's estimates" (PD at 64) and that "DRA and TURN presented expert analysis showing that PG&E's costs estimates for pressure testing and pipeline replacement, the largest cost components, greatly exceed the national average and are based on unsupported assumptions drawn from a small sample of such work done on an emergency basis." PD at 99-100. Nevertheless, the PD concludes: "We agree [with PG&E] that DRA's analysis is insufficient to overcome PG&E's *actual cost experience* of pressure testing natural gas pipeline in its natural gas system." PD at 65 (emphases added). The PD makes an almost identical finding regarding PG&E's gas pipeline construction costs: "PG&E's cost forecast for replacing pipeline is higher than DRA's*, but is supported by actual PG&E operational experience and is therefore reasonable.*" PD at 115, FOF 23; see also PD at 72.

Significantly, the PD does not examine why PG&E's costs are so much higher than industry norms and it disregards substantial evidence that PG&E's experience was inadequate including: (1) PG&E's admission that "neither one of us [PG&E and Gulf] had a lot of experience in pressure testing existing pipelines";[64] (2) DRA's showing that only a small portion of PG&E's requested costs are based on PG&E's experience;[65] and (3) DRA's showing that

[64] 11 RT 1405, ll. 25-27, Hogenson/PG&E.
[65] DRA Reply Brief at 20.

PG&E's witnesses had significantly less experience than DRA's experts.[66] Instead, on the basis of PG&E's "experience" the PD adopts wholesale PG&E's projected costs for both testing and replacement of its gas pipelines, notwithstanding DRA and TURN's expert showings.

In sum, the PD concludes that any cost proposal put forward by PG&E is reasonable, even if extraordinarily high, because of PG&E's "experience." The PD effectively creates a presumption in favor of PG&E's cost showings, which intervenors - with no similar "experience" – cannot, in the PD's words, "overcome." PG&E has the burden of proof pursuant to § 454. The PD commits legal error by shifting this burden to the intervenors through a rebuttable presumption created by PG&E's "experience." The PD also commits legal error to the extent that it disregards substantial evidence presented by the intervenors to overcome this improper rebuttable presumption.

V. CONCLUSION

For all the foregoing reasons, and as set forth in its testimony, DRA proposes that the PD be revised consistent with the foregoing and the attached Appendix A.

Respectfully submitted,

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[66] DRA Opening Brief at 74-76.