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

CITY AND COUNTY OF SAN FRANCISCO'S APPLICATION FOR REHEARING OF DECISION NO. 12-12-030

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I. INTRODUCTION

Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, the City and County of San Francisco (the City) respectfully files this application for rehearing of Decision (D.) 12-12-030 (the Decision). The Decision begins by stating "This decision requires Pacific Gas & Electric Company (PG&E) to continue its work towards becoming a safe natural gas transmission system operator." Yet, despite this tacit acknowledgement that PG&E is not currently such an operator, the Decision provides little analysis of safety requirements or the safety implications of PG&E's Pipeline Safety Enhancement Plan (PSEP). The Decision is strong on rhetoric about decades of mismanagement by PG&E, but in the end rewards the utility by finding most of its cost proposals reasonable. The Decision fails to satisfy the Commission's obligations to ensure safe utility operations or establish reasonable rates.

The Decision commits legal error because it:

(i) fails to meet the Commission's statutory obligations under both federal and state law to ensure the safe operations of natural gas pipelines in California;

(ii) fails to require PG&E to properly identify, analyze, and remediate threats to pipeline integrity;

(iii) approves with no rationale PG&E's proposal to delay work on pipelines in densely populated locations;

(iv) makes a significant substantive change to the Proposed Decision without circulating the Revision for comment;

(v) awards to PG&E ratemaking treatment and a generous return on equity that are contrary to law and not supported by the record.

The Commission should grant rehearing to correct these legal errors.

II. LEGAL STANDARD

Any party to an action or proceeding may seek rehearing of a Commission decision.[1] An application for rehearing is appropriate where a Commission decision is unlawful or erroneous.[2] The application must set forth the grounds for legal error and make specific references to the record or

[1] Cal. Pub. Util. Code § 1731.

[2] Commission Rule of Practice and Procedure 16.1.

law.[3] The purpose of the application is to "alert the Commission to a legal error, so that the Commission may correct it expeditiously."[4]

A party may satisfy this burden by demonstrating that:

> (1) The commission acted without, or in excess of, its powers or jurisdiction.
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> (2) The commission has not proceeded in the manner required by law.
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> (3) The decision of the commission is not supported by the findings.
>
> (4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.
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> (5) The order or decision of the commission was procured by fraud or was an abuse of discretion.
>
> (6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.[5]

III. LEGAL ERRORS

A. The Decision Commits Legal Error By Failing To Address Safety

1. The Decision Fails To Fulfill The Commission's Statutory Obligation To Ensure The Safe Operation Of Natural Gas Pipelines In California.

The Decision contravenes the Commission's statutory obligations under both federal and state law to ensure the safe operations of natural gas pipelines in California. Pursuant to the Pipeline Safety Act (PSA), the Commission certifies to the federal government that it has jurisdiction and authority to regulate intrastate pipeline facilities, has adopted the federal safety standards, and is enforcing them.[6] The purpose of the PSA is to "provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities…"[7] To achieve this purpose, the Commission has an obligation to not only understand the pipeline safety regulations but also enforce those rules to give them meaning.

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[3] *Id.*

[4] *Id.*

[5] Cal. Pub. Util. Code § 1757; *see also Santa Clara Valley Transportation Authority v. Public Utilities Com'n*, (2004) 124 Cal.App.4th 346 (Commission actions beyond scope of jurisdiction are void); *Southern California Edison v. Public Utilities Com'n*, (2006) 140 Cal.App.4th 1085 (failure to follow Commission rules constitutes failure to act in manner required by law); and *see generally TURN v. Public Utilities Com'n* (2008) 166 Cal.App.4th 522 (Commission decision inconsistent with statutory directive and the Commission cannot ignore unrebutted evidence in the record.

[6] 49 U.S.C. § 60105(a) – (c).

[7] 49 USC § 60102(a)(1).

In addition, under Public Utilities Code section 963 "It is the policy of the state that the commission and each gas corporation place safety of the public and gas corporation employees as the top priority."[8] In order to achieve this goal, "The commission shall take all reasonable and appropriate actions necessary to carry out the safety priority policy of this paragraph consistent with the principle of just and reasonable cost-based rates."[9] Further, Section 761 requires the Commission to correct any unsafe practices, facilities, equipment, or service of a utility.

While the Decision is clear that PG&E must "continue its work towards becoming a safe natural gas transmission system operator," the Decision contains little to no analysis on the safety issues presented by PG&E's PSEP. The Decision does little to correct or modify the flaws identified in the record or determine if PG&E's proposal places the "safety of the public and gas corporation employees as the top priority." Likewise, the Decision contains only the most cursory analysis of what work in PG&E's current proposal could have been avoided had PG&E been operating its natural gas pipeline system as a reasonable and prudent operator. Thus, the Decision is also flawed in that the Commission has not taken "all reasonable and appropriate actions necessary to carry out the safety priority policy" and it is not "consistent with the principle of just and reasonable cost-based rates."

In D.11-06-017, the Commission ordered natural gas pipeline operators to: pressure test or replace all in-service natural gas transmission pipelines that do not have verifiable records of a pressure test starting with pipeline segments in Class 3 and 4 locations and Class1 and 2 high consequence areas (collectively HCAs).[10] In that decision, the Commission made clear that "we are resolute in our commitment to the safety of natural gas transmission pipelines."[11] Indeed, the Commission recognized that in order "to perform our Constitutional and statutory duties we must have forthright and timely explanations of the issues, as well as comprehensive analysis of the advantages and disadvantages of potential actions."[12]

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[8] Cal. Pub. Util. Code § 963(b)(3).

[9] *Id.*

[10] D. 11-06-017, Ordering Paragraph 4.

[11] D. 11-06-017 at p. 17.

[12] D. 11-06-017 at p. 17.

In his November 2, 2011 Amended Scoping Memo and Ruling, the Assigned Commissioner further encouraged the parties to provide "forthright and timely explanations of the issues" by modifying the original scoping memo to "allow the parties sufficient time to obtain such expert assistance as is needed to prepare the highest quality testimony."[13] In the ruling, the Assigned Commissioner encouraged parties to provide detailed testimony on the safety and rate impacts of the proposals.

> In these Implementation Plans, the gas system operators, this Commission, and parties will consider and evaluate far-reaching safety and rate proposals. The issues in this proceeding require an in-depth analysis of historical safety practices and ratemaking treatment, as well as innovative proposals to address prospectively safety and ratemaking. The testimony that will be most useful to the Commission as it considers these issues will include an assessment of past practices and proposals for future operations.[14]

At great effort and expense, many parties retained pipeline experts to review and opine on PG&E's proposal and submitted testimony addressing significant flaws in PG&E's proposal, and the safety implications of those flaws. The safety issues addressed by the parties include the proposed scope of work, the analysis supporting the decision tree methodology including proper threat identification and remediation, and concern with oversight of the PSEP. On the issue of PG&E's proposed scope of work, CCSF's witness, John Gawronski, identified how the scope and prioritization of PG&E's proposal did not conform those ordered in D.11-06-017 and how PG&E's proposal delayed work on pipeline segments in high consequence areas while prioritizing work on pipelines in less densely populated areas.[15] DRA witnesses also noted that PG&E's proposed scope did not conform to the priority ordered in D.11-06-017,[16] and that the "rationale for including Phase 2 segments in Phase 1 is often flawed, based on a review of sample projects."[17] The City of San Bruno's witness, Paul Wood, noted that the scope of work was not clearly defined. Specifically, Mr. Wood

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[13] November 2, 2011 Amended Scoping Memo and Ruling of the Assigned Commissioner, p. 2.

[14] *Id.*

[15] Exhibit 137 (CCSF Direct Testimony at p. 6).

[16] Exhibit 145 (DRA's Report on the Pipeline Safety Enhancement Plan of PG&E - Implementation Plan Analysis and Recommendations (Rondinone) at p. 8).

[17] Exhibit 143 (DRA's Report on the Pipeline Safety Enhancement Plan of PG&E - Policy-Cost Recovery (Pocta)at p. 6).

noted that because PG&E's data was unreliable "this implies that pipeline segmentation decision and identification of actions needed to ensure the safety of pipeline segments using the decision models may change as the characterization is completed."[18] TURN witness Richard Kuprewicz also commented that PG&E's proposal inappropriately prioritized Class 2 segments in its proposed scope of work.[19]

Many of the pipeline experts also questioned the merits the analysis in PG&E's proposal. CCSF witness Gawronski explicitly found that PG&E had not supported in its evaluation of "each project a process that considers the risk reduction and costs in its projects' priorities."[20] San Bruno witness Wood questioned the merits of the threat identification and the objectivity of decision trees.[21] He found that the Decision "trees include many decisions for which no criteria are stipulated."[22] DRA witness Rondinone closely examined PG&E's decision trees "for errors, risk assessment, and change in scope, with a focus on which segments should be prioritized for Phase 1 projects"[23] and found that the "Decision Tree was found to require adjustments that address pipeline safety and segment priority."[24] TURN witness Kuprewicz also provided extensive analysis on the benefits and flaws of PG&E's Decision Trees.[25]

Despite substantial pipeline safety expert testimony on these issues, the Decision contains no discussion, findings of fact or conclusions of law discussing the safety impacts of PG&E's proposed scope of work, the merits and flaws of PG&E's Decision Trees, including whether they properly address all potential threats to PG&E's pipelines or whether independent oversight is necessary. These are material issues that directly affect the reasonableness of PG&E's proposal. The analysis underpinning the Decision Trees goes to the very hearts of the level of safety being provided by

[18] Exhibit 154 (Testimony of Paul Wood at p. 3).

[19] Exhibit 131 (Direct Testimony of Kuprewicz at p. 16).

[20] Exhibit 137 (CCSF Direct Testimony at p. 18).

[21] Exhibit 154 (Testimony of Paul Wood at p. 3).

[22] *Id.* at p. 4.

[23] Exhibit 145 (DRA's Report on the Pipeline Safety Enhancement Plan of PG&E - Implementation Plan Analysis and Recommendations (Rondinone) at p. 1).

[24] *Id.*

[25] Exhibit 131 (Direct Testimony of Kuprewicz at pp. 19-29).

PG&E's proposal. Similarly, the threshold issue of scope directly affects the public safety because it modifies the priority in which pipeline segments are being addressed. The Decision should have addressed the merits of PG&E's analysis and scope of work in light of the substantial issues raised by the parties.

The Decision's failure to perform a comprehensive analysis of the advantages and disadvantages of potential remedial actions constitutes a failure to uphold the Commission's statutory obligations to ensure the public safety. A decision that fails to address the safety merits of PG&E's proposal or the significant flaws identified by the other parties fails to "take all reasonable and appropriate actions necessary" to "place safety of the public and gas corporation employees as the top priority."[26] Containing no thoughtful analysis on the primary safety issues raised in this proceeding, the Decision shows no understanding of the implications of the safety issues presented by the PSEP. Instead, the Decision focuses on the ratemaking aspects of the plan and who should bear the costs of the proposal. Unfortunately, this focus on ratemaking does not "provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities." As a result, the Decision provides no assurances as to the safety of the plan. Because the Decision contains no thoughtful analysis of the alternatives presented, the merits of each alternative and the weighing of the benefits of each alternative, the Decision fails to uphold the Commission's statutory obligations to ensure the public safety.

The Decision relies on the generalization that "PG&E's analytical presentation for its Implementation Plan shows a promising start at developing a coherent engineering-based analysis and decision-making process for pipeline safety improvement."[27] San Francisco supports developing sound engineering practices to help PG&E "continue its work towards becoming a safe natural gas transmission operator."[28] However, "promising starts" do not ensure the public safety. The Commission's approval of a promising start as the basis for a multi-billion dollar proposal also demonstrates that it is not taking "all reasonable and appropriate actions necessary to carry out the

[26] Cal. Pub. Util. Code § 963.

[27] Decision at p. 47.

[28] Decision at p. 1.

safety priority policy of [Public Utilities Code section 963] consistent with the principle of just and reasonable cost-based rates." Thus, these promising starts are insufficient to "provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities."[29]

2. The Decision Errs By Failing to Appropriately Address Numerous Material Issues Related to Safety

Separate from the Commission's statutory obligations under the PSA and Public Utilities Code sections 761, and 963, the Decision's failure to address material issues related to safety constitutes error in two additional ways. First, all Commission decisions must be "supported by the findings"[30] and "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[31] As discussed above, the safety issues raised by the parties to this proceeding are highly relevant to the Commission's consideration of the reasonableness of PG&E's proposal. The Decision fails to make specific findings of fact and conclusions of law regarding the safety implications of the analysis contained in PG&E's Decision Trees, the safety effects of PG&E's amended scope of work, and as discussed below the whether an independent monitor is appropriate in this instance. Because the Decision contains no separately stated findings of fact and conclusions of law on any of these material safety issues, the Decision contravenes the Commission legal obligation under Public Utilities Code section 1705.

Second, the Decision's silence on the material safety issues is not supported by the substantial evidence in light of the whole record. Although the Decision provides a partial summary of the positions of the parties,[32] in its discussion of safety issues the Decision simply regurgitates PG&E's proposal without evaluation or consideration of the analysis set forth by other parties.[33] The testimony of the non-PG&E parties provides substantial evidence demonstrating flaws in the proposed scope of Phase 1 and PG&E's Decision Tree logic. The Decision contains no discussion of these flaws, and

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[29] 49 USC § 60102(a)(1).

[30] Cal. Pub. Util. Code § 1757(a)(3).

[31] Cal. Pub. Util. Code § 1705.

[32] Decision at pp. 25-41

[33] Decision at pp. 49-51.

more tellingly the Decision makes no corrections to PG&E's Decision Trees. In other words, the Decision passes on any substantive analysis of the safety issues presented in the PSEP and simply assumes that proper safety measures have been proposed. The Decision's unquestioning acceptance of the safety analysis in PG&E's PSEP is not supported by the substantial evidence in light of the whole record.

3. The Decision's Delegation of Authority to CPSD to Oversee All PG&E's PSEP Activities Without The Assistance Of An Independent Monitor Is Not Supported by the Record

The Decision delegates the responsibility for overseeing PG&E's PSEP implementation to CPSD. Specifically, the Decision delegates to CPSD the authority to:

> (A) review all changes to the Implementation Plan proposed by PG&E, and require such modifications as are necessary to ensure public safety, and may concur in such proposals;
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> (B) inspect, inquire, review, examine and participate in all activities of any kind related to the Implementation Plan. PG&E and its contractors shall immediately produce any document, analysis, test result, plan, of any kind related to the Implementation Plan as requested by CPSD, and such request need not be in writing;
>
> (C) take and order PG&E to take such actions as may be necessary to protect immediate public safety;
>
> (D) issue immediate stop work orders to PG&E and all its contractors when necessary to protect public safety, and PG&E must comply immediately and consistent with any needed safety protocols; with the understanding that
>
> (E) The Director of CPSD, the Commission's Executive Director, and the Chief Administrative Law Judge shall offer PG&E, parties to this proceeding, and the public such procedural opportunities as may be feasible under the specific circumstances of any instance in which CPSD is required to exercise its delegated authority.[34]

Even to the lay participant, this delegation presents a large responsibility. The decision to delegate so much responsibility demonstrates a lack of awareness by the Commission of the limitations in its own expertise, capacity and resources and the extent to which such limitations undermine the effective implementation of the PSEP. Historically, the Commission's regulation of gas pipeline safety has been "a struggle for resources."[35] As articulated by the Commission's

[34] Decision Ordering Paragraph 8.

[35] Exhibit 121 (Independent Review Panel Report at p. 18, incorporated by reference in Direct Testimony of Thomas J. Long at p. 4).

Independent Review Panel, historically "the CPUC did not have the resources to monitor PG&E's performance in pipeline integrity management adequately or the organizational focus that would have elevated concerns about PG&E's performance in a meaningful way."[36] In addition, the NTSB found that the CPUC "failed to uncover the pervasive and long-standing problems within PG&E"[37] and that the "CPUC lost opportunities to identify needed corrective action and to follow through and ensure that PG&E completed the prescribed corrective actions in a timely manner."[38]

The Decision appears to have made no consideration of these findings, or CPSD's already on-going obligations to enforce pipeline safety. Most importantly, at the time the Independent Review Panel and the NTSB made these findings, CPSD was already understaffed to perform those basic obligations for pipeline safety oversight. The Decision's attempt seeks to ensure safety by delegating oversight to CPSD is not supported by the record. Moreover, a broad, generalized delegation to CPSD does not satisfy the Commission's obligations under the Public Utilities Code.

If the Commission seeks to ensure that safety is in fact the top priority it must provide the proper oversight and expertise by appointing an independent monitor to oversee PG&E's implementation of the PSEP. The record also demonstrates that PG&E's proposal to use an external advisory board is not in fact external because it reports directly to PG&E, and is no substitute for a truly independent monitor.[39] In addition to ensuring that the proper priority of work is performed in the appropriate manner, the independent monitor can help to ensure that ratepayers are charged "just and reasonable cost-based rates."[40]

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[36] Exhibit 121 (Independent Review Panel at p. 5, incorporated by reference in Direct Testimony of Thomas J. Long at p. 4).

[37] Exhixibt 121 (NTSB Final Accident Report at p. 122, incorporated by reference in Direct Testimony of Thomas J. Long at p. 4).

[38] *Id.*

[39] Exhibit 137 (CCSF Direct Testimony at p. 56).

[40] Cal. Pub. Util. Code § 963.

B. The Decision Errs By Failing To Require PG&E To Properly Identify, Analyze and Remediate Threats To Pipeline Threats

1. The Decision's Finding That the "Implementation Plan Uses A Consistent Methodology to Identify And Prioritize Recommended Actions Based on Pipeline Threat Categories" Is Unsupported By The Record.

Instead of addressing the many safety issues identified in this proceeding, the Decision states that the "Implementation Plan uses a consistent methodology to identify and prioritize recommended actions based on pipeline threat categories."[41] This finding is directly contrary to the many findings from the Independent Review Panel Report and the NTSB taking issue with PG&E's gas pipeline operations. Specifically, the Independent Review Panel found that PG&E had failed to (1) identify all threats to each segment as required by regulations, (2) identify highest risk pipeline segments, (3) perform necessary tests for pipeline integrity, and (4) remediate significant anomalies that could result in pipeline failures.[42] In its root cause investigation, the NTSB also faulted PG&E's threat identification and remediation. "In summary, PG&E's failure to consider evidence of seam defects discovered during both construction and operation of Line 132, as well as its weighting of factors so as to understate the threat of manufacturing defects, resulted in PG&E selecting an assessment technology (ECDA) that was incapable of detecting seam flaws like the one that led to this accident."[43]

The methodology approved by the Decision is the same methodology that the Commission's Independent Review Panel described as lacking sufficient analysis and "was not well-reasoned or based on a thoughtful examination of alternatives."[44] This is because the PSEP is premised upon PG&E's Pipeline 2020 program. PG&E has admitted that "significant elements of the Pipeline 2020 program ... did become part of our implementation plan that's being considered in this proceeding"[45] and presented "ultimately ... in the form of Pipeline Safety Enhancement Plan that we're discussing

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[41] Decision, Finding of Fact 3.

[42] Exhibit 121 (Independent Review Panel Report at p. 8, incorporated by reference in Direct Testimony of Thomas J. Long at p. 4)

[43] Exhibit 121 (NTSB Final Accident Report at p. 112, incorporated by reference in Direct Testimony of Thomas J. Long at p. 4).

[44] Exhibit 121 (Independent Review Panel Report at 13, incorporated by reference in Direct Testimony of Thomas J. Long at p. 4).

[45] Tr., Vol. 9, at 927:25-928:1 (Bottorff).

today."[46] Following the issuance of the Independent Review Panel Report PG&E stated "[w]e welcome today's thoughtful report by the Independent Review Panel, and we're grateful for their hard work. We will move quickly to review the report's detailed findings and take further action to improve the safety, quality and performance of our gas system"[47] However, PG&E made no substantive improvements to the Decision Trees.[48]

PG&E offered no evidence to rebut these facts. At best, PG&E attempted to argue in its reply brief that "At the time of IRP review, the Pipeline 2020 Program was in its infancy, and was presented to the IRP in a summary fashion."[49] However, it is elemental that statements of fact in briefs which are not supported by the evidence in the record must be disregarded.[50] It is equally clear that the Commission "cannot ignore the unrebutted evidence in the record."[51] Thus, in light of the unrebutted evidence directly on point, the Decision's finding that that PG&E is able to properly identify and prioritize segments to be tested, replaced or retrofitted is unsupported by the evidence and constitutes legal error by the Commission.

2. The Decision Commits Legal Error By Failing to Address the Threat of Cyclic Fatigue

One specific example of where the Decision fails to adequately address PG&E's threat identification is cyclic fatigue. The Decision lacks any discussion on the threat posed by cyclic fatigue to PG&E's pipelines. TURN witness Kuprewicz identified the potential harm caused by pressure cycling. Mr. Kuprewicz advised that PG&E perform a pressure cycle monitoring analysis "to assure remaining seam imperfections left in these specific low-pressure hydrotest test segments don't quickly grow to a near term rupture failure from pressure cycling associated with day to day operating pressure changes."[52] The record also contains a report prepared by PG&E's expert witnesses addressing the

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[46] Tr., Vol. 9, at 929:19-21 (Bottorff).

[47] Exhibit 31 (Press Release: PG&E Will Quickly Review Independent Panel Report Findings).

[48] Exhibit 34 (CCSF DR 005-03); Exhibit 33 (CCSF DR 005-05).

[49] PG&E Reply Brief at p. 59.

[50] *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.*, (2009) 175 Cal. App. 4th 64, 79.

[51] *TURN v. Pub. Util. Com'n* (2008) 166 Cal. App. 4th 522, 537.

[52] Exhibit 131 (Direct Testimony of Kuprewicz at p. 31).

threat of cyclic fatigue on its Peninsula pipelines.[53] Not only does that report find that the threat of cyclic fatigue is present on PG&E's pipelines, it also finds that some segments in PG&E's service territory have passed their expected time to failure.[54]

The Decision contains no findings of fact or conclusions of law on this material issue. Instead the Decision makes one reference to cyclic fatigue in the narrow context of the prioritization of pipelines in rural settings.[55] This reference, however, fails to even address how cyclic fatigue would apply to PG&E. This failure to meaningfully address a material safety issue constitutes legal error.

C. The Decision Errs By Approving With No Rationale PG&E's Proposal To Delay Work On Pipelines In Densely Populated Locations

In D. 11-06-017 the Commission ordered PG&E to "file and serve a proposed [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 619(c)."[56] The Decision specifically directed that "[t]he Plan should start with pipeline segments located in Class 3 and Class 4 locations and Class 1 and Class 2 high consequence areas, with pipeline segments in other locations given lower priority for pressure testing."[57] In its PSEP proposal, PG&E altered the prioritization of work, asserting that

> Despite Decision 11-06-017 stating that each Implementation Plan "should start with pipeline segments located in Class 3 and Class 4 locations and Class 1 and Class 2 high consequence areas," this represents far too large of a work scope for PG&E to accomplish in a 4-year period (2011-2014) in Phase 1.[58]

Thus, PG&E on its own modified the scope ordered by the Commission to instead

> prioritize a subset of that broader scope into Phase 1, consisting of the pipe segments in urban areas (Class 2, 3 and 4 and Class 1 HCA) operating at or greater than 30 percent SMYS without strength tests and those segments

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[53] Exhibit 156 (PG&E Response to Data Request 30, question 6, from The Utility Reform Network, with the attached March 19, 2012, report entitled "Analysis of the Effects of Pressure-Cycle-Induced Fatigue-Crack Growth on the Peninsula Pipeline" by Keifner & Associates, Inc.)

[54] *Id.* at p. 6, Table 1

[55] Decision at p. 16.

[56] D.11-06-017, Ordering Paragraph 4.

[57] *Id.*

[58] PG&E Testimony at p. 3-37, ll. 6-11.

> characterized with a manufacturing threat at or greater than 20 percent SMYS.... The remaining urban pipe (Class 2, 3 and 4 and Class 1 HCA) operating between 20 percent SMYS and 30 percent SMYS characterized with a Fabrication and Construction (F&C) threat construction threat and/or a corrosion and latent mechanical damage threat, will be addressed at the beginning of Phase 2 commencing in 2015.[59]

As a result of PG&E's unilateral decision to reprioritize this work, some pipelines operating in densely populated locations or near areas where many people congregate will be delayed to Phase 2. This issue was addressed by San Francisco and others throughout this proceeding,[60] but was never addressed by the Decision. PG&E's proposed scope of Phase 1 excludes 176 miles of pipeline segments in Class 2, 3, and 4 locations and Class 1 high consequence areas operating between 20% and 30% SMYS with fabrication & construction defects.[61] The priority of work articulated by Decision 11-06-017 requires that a portion of these 176 miles of pipeline segments be included in Phase 1.[62] At the same time, PG&E proposes to pressure test, replace and in-line inspect 499.8 miles of Class 1 and Class 2 non-high consequence area pipeline. [63]

The Decision finds that PG&E's proposed scope for Phase 1 was inappropriately over-inclusive and that "pipeline segments in Class 2 or Class 1 which are not high consequence areas or adjacent to Class 3 or 4 locations or high consequence areas, must be deferred to Phase 2 of the Implementation Plan."[64] There is only one Finding of Fact that addresses the proposed prioritization of work, but it does not address the safety effects of PG&E's proposal to delay work on pipelines where the consequences of failure are greatest,.[65]

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[59] PG&E Testimony at p. 3-37, ll. 11-22.

[60] Comments of San Francisco on the Technical Report of CPSD Re: PG&E's Implementation Plan at p. 3 (filed January 13, 2012); CCSF Testimony at p. 7 (filed January 31, 2012), CCSF Opening Brief at p.p. 9-12; CCSF Reply Brief at p.p. 3-5; Reply Comments on Proposed Decision at p. 5; Exhibit 145 (DRA's Report on the Pipeline Safety Enhancement Plan of PG&E - Implementation Plan Analysis and Recommendations (Rondinone) at p. 1).

[61] Exhibit 137 (CCSF Direct Testimony Attachment 5 [PG&E Response to CCSF OIR Data Request 001-Q06]).

[62] D. 11-06-017, Ordering Paragraph 4.

[63] Exhibit 137 (CCSF Direct Testimony Attachment 5 [PG&E Response to CCSF OIR Data Request 001-Q06]).

[64] Decision at p. 67.

[65] Decision, Finding of Fact 3 states that the "Implementation Plan uses a consistent methodology to identify and prioritize recommended actions based on pipeline threat categories and

The Decision commits legal error in that: (1) it is an abuse of discretion for the Commission to order one scope of work, but approve a different scope of work without justification; (2) the Commission has not proceeded in a manner required by law by failing to make any findings supporting the exclusion of work on pipelines in Class 3 and Class 4 locations and Class 1 and Class 2 high consequence areas; (3) the substantial evidence in light of the whole record does not support approval of PG&E's modified scope of work; and (4) in violation of Section 1708, the Decision modifies with no discussion the Commission's determination in D.11-06-017 of the scope and priorities for PG&E's pipeline testing and replacement.

1. The Public Safety Is Diminished By The New Scope Of Work

The scope of work established in D. 11-06-017 was based on the NTSB recommendations that PG&E search its records, verify its maximum allowable operating pressures and perform pressure tests for its pipelines in Class 3 and Class 4 locations and Class 1 and Class 2 high consequence areas.[66] In other words, PG&E was ordered to prioritize its pipelines for work using the method 1 definition of "high consequence areas."[67]

By definition, pipelines operating in high consequence areas are located in Class 3 and 4 locations or operate near identified sites. Pipelines in Class 3 and Class 4 locations operate in more densely populated areas than pipelines located in Class 1 and 2 locations.[68] Similarly, pipelines operating in Class 1 and 2 high consequence areas are pipelines that operate near identified sites—areas where people are likely to congregate such as churches, schools and playgrounds.[69] If an adverse event occurs on a pipeline in a high consequence area – such as one of the pipeline segments in the 176 miles of pipeline excluded from Phase 1 – it will occur on a pipeline in a densely populated

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PG&E organized this methodology into a decision tree to identify actions such as performing pressure tests, replacement of pipe, and in-line inspection, to address specific risks."

[66] January 2011, NTSB urgent recommendations P-10-2, P-10-3, and P-10-4.

[67] 49 CFR § 192.903. High consequence areas are used to define pipeline segments that must be included in a natural gas pipeline operator's Transmission Integrity Management Program.

[68] Exhibit 137 (CCSF Direct Testimony at pp. 6-7).

[69] 49 C.F.R § 192.903.

area or one that operates near an identified site. In other words, the consequences of failure will be greater if an adverse event occurs on one of these pipeline segments.[70] Indeed, even PG&E agrees that it should perform pipelines safety actions "where they can have the greatest impact – on Class 3 and 4 areas."[71]

The Commission ordered PG&E to prioritize work on pipelines in Class 3 and 4 locations and high consequence areas, presumably because the consequence of failure for these pipeline segments is greatest.[72] By delaying work on pipelines located in more densely populated areas and pipelines operating near identified sites, PG&E is increasing the risk of severe consequences to people living and working near its pipelines.[73] While the Decision rejected the over-inclusive aspects of PG&E's proposal, it failed to correct the under-inclusive aspects of the proposal, which have a direct impact on public safety.

2. The Commission Abused Its Discretion By Approving A Different Scope Of Work Without Justification For The Changes

As the evidence cited above makes clear, pipeline safety work in areas that are more densely populated and areas where people tend to congregate has the greatest potential impact. Instead of proposing to fix its pipelines in Class 3 and Class 4 locations and Class 1 and Class 2 high consequence areas first, PG&E has proposed to delay work on certain pipelines in those areas. Despite the increased risk of harm caused by failure as described above, the Decision provides no rationale for approving PG&E's incomplete proposal. In fact, it is not even clear that the Commission recognizes this safety impact, since there is no discussion of the issue. Thus, the Commission has failed to proceed in a manner required by law by approving without justification PG&E's incomplete proposal that delays work in the locations where the consequences of failure are the greatest

To correct this deficiency, the Commission must require PG&E to submit a proposal to test, replace or retrofit for inline inspection, those pipeline segments in Class 3 and 4 locations that PG&E

[70] Exhibit 137 (CCSF Direct Testimony at p. 8).

[71] PG&E Opening Brief at p. 37.

[72] Exhibit 137 (CCSF Direct Testimony at p. 6).

[73] Exhibit 137 (CCSF Direct Testimony at p. 6).

has inappropriately excluded from the scope of Phase 1. This is essential to ensure that safety work in densely populated locations is properly prioritized, as the Commission ordered in D. 11-06-017.

3. The Decision Errs By Failing to Address The Unwarranted Delay Of Work On Pipelines Where The Consequences Of Failure Are Greatest.

The Decision also fails to satisfy the Commission's legal duty to make findings supporting its decision making. Commission decisions must be "supported by the findings"[74] and "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision."[75]

As detailed above, rather than requiring PG&E to adhere to the priority originally ordered, the Decision half-corrects PG&E deviations from the ordered scope of work, and fails to remedy PG&E's failure to propose work on pipeline segments in Class 3 and Class 4 locations and Class 1 and 2 high consequence areas. This threshold issue directly affects the public safety and is material to the Commission's review of PG&E's PSEP. Thus, the Decision commits legal error by failing to make any findings of fact or conclusions of law approving PG&E's decision to exclude work on pipelines in areas where the threat of failure has the most severe consequences.

Lacking any findings of fact or conclusions of law that support PG&E's decision to delay this important work, the Decision is silent on whether PG&E's proposal appropriately responded to the scope ordered in D.11-06-017. This silence, however, is not supported by the evidence in the record. Many parties addressed the issue of scope, and despite the Decision's partial rejection of PG&E's proposed scope of work, it contains no justification for approving PG&E's reprioritized scope of work.

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4. The Decision Commits Legal Error By Modifying The Requirements of D.11-06-017 Without Providing Notice And Opportunity for Comment

The Commission, following the lead of the NTSB, established a clear scope and priorities for pipeline testing and replacement in D.11-06-017. The Decision modifies these priorities, *without*

[74] Cal. Pub. Util. Code § 1757(a)(3).

[75] Cal. Pub. Util. Code § 1705.

discussion, by approving PG&E's modified scope. As discussed above, this is an important safety issue that should not be modified absent notice to parties that the Commission was contemplating changing the scope in a manner that would extend the time for testing and replacement of pipelines in densely populated areas. PG&E's proposed modification does not substitute for notice from the Commission, something that is required by Public Utilities Code section 1708.

D. The Commission Violated Public Utilities Code Section 311(e) By Adopting an Alternate Without Public Notice Or Opportunity to Comment.

On October 12, 2012, Judge Bushey issued the Proposed Decision that determined PG&E's "return on equity for investments made pursuant to the Implementation Plan should be reduced to the cost of debt, currently 6.05%, to reflect PG&E's poor management of its gas transmission system."[76] On December 19, 2012, at 5 PM, the day before the Commission voted on the Decision, the Commission issued a draft Revision 1 (Revision) that maintains the well-reasoned discussion supporting a reduction of the return on equity for PG&E's investments made pursuant to the Implementation Plan, but eliminates the reduction itself and hence grants PG&E the generous return on equity it had sought of 11.35%. The Revision was adopted by the Commission as its final Decision on December 20, 2012, with no service or notice of the Revision to the parties and no opportunity to comment. This does not comport with the requirements of Section 311(e), which reads in part:

> (e) Any item appearing on the commission's public agenda as an alternate item to a proposed decision or to a decision subject to subdivision (g) shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision, "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs. . . .

Adoption of the Decision without service of the new alternate constituted legal error.[77] There can be no doubt that the change to the return on equity for investments made pursuant to the

[76] Proposed Decision at 108.

[77] See D.06-05-043, 2006 Cal. PUC LEXIS 197 at *4 (rejecting a change to a resolution that was made in a last minute alternate that was not served on the parties).

Implementation Plan was a "substantive revision to a proposed decision that materially changes the resolution of a contested issue." The rate of return on equity was a contested issue, with proposals ranging from the 11.35% proposed by PG&E to the 6.05% recommended as an alternative by TURN.[78] The Revision changed the return on equity from the cost of debt (currently at 6.05%) in the Proposed Decision to 11.35%, a return "at the 'upper end' of the just and reasonable range . . . ."[79]

The Commission has adopted Rule 14.2(c) to implement Section 311(e), as follows "[a]n alternate to a proposed decision shall be filed with the Commission and served on the official service list without undue delay." However, Rule 14.1(d) narrowly defines alternate as follows:

> "Alternate" means a substantive revision by a Commissioner to a recommended decision not proposed by that Commissioner . . . which either:
>
> (1) materially changes the resolution of a contested issue, or
> (2) makes any substantive addition to the findings of fact, conclusions of law, or ordering paragraphs.
>
> . . . A substantive revision to a proposed decision or draft resolution is not an "alternate" if the revision does no more than make changes suggested in prior comments on the proposed decision or draft resolution, or in a prior alternate to the proposed decision or draft resolution. (Emphasis added.)

The Commission may claim that under its rules, the Revision is not an "alternate" pursuant to Rule 14.2(c) because it was not issued by a Commissioner other than the Commissioner responsible for the Proposed Decision and because the issue of return on equity was addressed in comments to the Proposed Decision. However, the narrow definition of alternate in Rule 14.1(d) is contrary to the explicit statutory language in Section 311(e). Thus, the provisions narrowing the definition of alternate in Rule 14.1(d) are themselves illegal. An agency's failure to proceed in the manner required by law is a prejudicial abuse of discretion under the administrative mandamus statute.[80] Proceeding pursuant to an invalid regulation is not proceeding in the manner required by law.[81]

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[78] Decision at pp. 101-102.

[79] Decision at p. 102

[80] Cal. Code of Civil Proc. § 1094.5(b).

[81] *Verdugo Hill Hospital Inc. v. Department of Health*, (1979) 88 Cal. App. 3d 957; *Rosas v. Montgomery*, (1970) 10 Cal. App. 3d 77, 88 (disapproved of on other grounds by, *Woods v. Sup. Ct.*, (1981) 28 Cal. 3d 668; see also *Woods v. Sup. Ct.*, 28 Cal. 3d 668, 679.

In this case, Rule 14.1(d) adds two unlawful limitations on the broader language in Section 311(e): first an alternate is not considered an alternate if it is issued by the same Commissioner as the Commissioner who issued a proposed decision, and second, an alternate is not considered an alternate if the changes relate to an issue discussed in prior comments. There is no statutory basis for these limitations, and they severely restrict the obligation of the Commission to give parties notice and an opportunity to be heard on changes to a proposed decision.

As to the first limitation, the fact that the same Commissioner has issued an alternate has no bearing on whether a change to a proposed decision is a "substantive revision to a proposed decision that materially changes the resolution of a contested issue or [a] substantive addition to the findings of fact, conclusions of law, or ordering paragraphs."[82] Accordingly, the limitation has no basis in the statute and is hence illegal.

Moreover, the fact that parties may have previously addressed an issue in their comments does not afford them the opportunity to address the particular reasoning for a modification to a proposed decision. Thus, the limitation is contrary to the language in Section 311(a) that in fact requires that the changes relate to "a contested issue," since it is highly likely that contested issues will have been addressed in prior comments. The limitation also has the effect of severely narrowing the application of Section 311(a) without any basis in the language of the statute, because most substantive changes will relate to issues that have been addressed previously by the parties.

"In general, an agency's interpretation of statutes within its administrative jurisdiction is given presumptive value as a consequence of the agency's special familiarity and presumed expertise with satellite legal and regulatory issues."[83] However, "the interpretation of statues is a question of law subject to independent judicial review."[84] "In interpreting statutes, [the courts] are free to take into account agency interpretations, but such agency interpretations are not binding or necessarily even

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[82] Section 311(e).

[83] *PG&E Corp. v. Public Utilities Commission*, (2004) 118 Cal. App. 4th 1174, 1194.

[84] *Id.* at 1195.

authoritative."[85] The Commission . . . may not "disregard ... express legislative directions to it, or restrictions upon its power found in other provisions of the act or elsewhere in general law."[86]

"In statutory construction cases, [the court's] fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [The court] begin[s] by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, [the court] presume[s] the lawmakers meant what they said, and the plain meaning of the language governs.".[87] "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature . . . . .' "[88] In this case, the language of the statute is not ambiguous, and there is no basis in the plain language of Section 311(e) or other portions of the Public Utilities Code for the limitations in the definition of an alternate set forth in Rule 14.1. Further, the limitations serve to contravene the objective of the section: to afford parties notice and an opportunity to comment on substantive changes to a proposed decision. Accordingly, the limitations in Rule 14.1 are themselves illegal.

Finally, the requirement that the failure to proceed in the manner required by law be prejudicial[89] is easily met in this case. Parties in this case had no notice of the significant change made to the Proposed Decision less than twenty-four hours before its adoption, and hence no opportunity to comment. This is contrary to the specific language and intent of Section 311(e).

This case is analogous to the recent Oakley case, in which the Court of Appeals overturned a Commission decision for failure to comport with statutory procedural requirements.[90] In the Oakley case, the Commission reversed its previous rejection of a proposed power purchase agreement with the

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[85] *Id.* at 1195 omitting citations.

[86] *PG&E Corp. v. Public Utilities Com.* (2004) 118 Cal.App.4th 1174, 1199; *The Utility Reform Network v. Public Utilities Commission*, (March 16, 2012) Not Officially Published, 2012 WL 1059368 at 7.

[87] *Estate of Griswold v.See* (2001), 25 Cal.4th 904, 910-11(citations omitted); see also On–Line Power, Inc. v. Mazur (2007) 149 Cal.App.4th 1079, 1085.

[88] *Blumhorst v. Jewish Family Services of Los Angeles* (2005), 126 Cal.App.4th 993, 1001 (citations omitted).

[89] Cal. Code of Civil Proc. § 1094.5(b)..

[90] See *The Utility Reform Network v. Public Utilities Commission*, (March 16, 2012) Not Officially Published, 2012 WL 1059368.

owners of the Oakley power plant, upon a PG&E petition for modification indicating a later in-service date for the agreement. An alternate to the initial proposed decision on the petition for modification granted PG&E's petition and approved the power purchase agreement.[91] A further revision to the alternate deemed the petition for modification an application, which the Commission granted. The Court of Appeals reversed because the Commission failed to follow its own rules for reviewing an application.[92] Further, the Court of Appeals determined that the revision to the initial alternate decision constituted an alternate subject to Section 311(e), even though the revision maintained the initial outcome (approval of the power purchase agreement).

The Court of Appeal explained that the change significantly changed the procedural disposition of the case, and deleted an important finding.[93] The Court of Appeals ultimately determined that the violation of Section 311(e) was not dispositive because TURN found and commented on the revisions to the alternate, but it cited the Commission's failure to comply with Section 311(e) as providing additional support to its determination to reverse. The Commission explained:

> [T]he manner in which the Commission adopted the Revised Alternate provides additional support for our decision. The Revised Alternate substantially revised the Alternate, changed the procedural mechanism of approval in an unforeseeable manner not contemplated by the rules, and included new findings of fact not suggested by the parties' comments. Yet, the Commission did not serve the Revised Alternate on the parties or allow a meaningful opportunity to comment. Instead, it opted simply to post the revision online, allow a comment period of only three business days, and notify the parties of the opportunity for comment on page 13 of the posted revision, leaving them scrambling to respond. This apparent attempt to minimize public input lends further credence to TURN's contention that the Commission had become so enamored of the project, it was willing to dispense with the procedural safeguards established by its rules and the statutes in order "to achieve its preferred outcome."[94]

As in the Oakley case, the changes to the proposed decision in this case were substantively important and included deletion of a key finding of fact. Unlike in the Oakley case, the parties did not (and given the timing could not have) become aware of the change and submit comments. Further,

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[91] The initial proposed decision denied the petition for modification.

[92] *The Utility Reform Network v. Public Utilities Commission*, (March 16, 2012) Not Officially Published, 2012 WL 1059368 at 9-10.

[93] *Id.* at 9.

[94] *Id.* at 10.

more seriously than in the Oakley case, the changes in this case reversed the outcome. Finally, it is worth noting that in Oakley, the revisions to the first alternate were proposed by the same Commissioner who issued the first alternate, Commissioner Bohn. Accordingly, as in Oakley, the Decision's last minute modifications are illegal.

E. The Adopted Ratemaking Treatment Incorrectly Applies the Burden of Proof and Is Not Supported By the Record.

Under Public Utilities Code Sections 451, 454, and 463, the Commission may only approve rate recovery for costs that have been shown to be reasonable and may not approve costs that reflect utility imprudence. The record identifies substantial evidence of PG&E's imprudence, and the Decision even recognizes some of this evidence, yet it fails to reflect this evidence in its cost-recovery determinations as required by the law. In addition, the Commission unlawfully shifts the burden of proof from PG&E to other parties in contravention of Section 454. Finally, the Commission's adoption of a last-minute, behind-the-scenes modification that increased PG&E's rate of return on equity over what was in the Proposed Decision only made this worse by enriching PG&E's cost recovery at the expense of ratepayers, contrary to the evidence in the record.

The Decision correctly recognizes the widespread imprudence of the company's management decisions.[95] The Decision finds, for example, that "the record shows that the need to do this amount of testing and replacement on an 'urgent' basis has been caused, in part, by PG&E's mismanagement of its natural gas transmission system over multiple decades"[96] and that "the majority of pipeline to be tested and replaced has been part of PG&E's system for decades, and the safety value of pressure testing has similarly been well-known for decades."[97]

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[95] See, e.g., Decision at pp. 99-100 (" 'urgent' safety improvements are overdue and caused by years of poor management decisions"; PG&E "let its natural gas transmission system deteriorate to the point where the Commission was required to order a massive and relatively short-term testing and replacement plan"); pp. 104-105 ("PG&E's history of addressing its natural gas transmission pipelines . . . reflects a long-standing avoidance of sound, safety- engineering-based decision-making in favor of financially-motivated nominal regulatory compliance"); p. 2 (Decision orders PG&E "to continue its work towards becoming a safe natural gas transmission system operator", making the point that PG&E is not now such an operator).

[96] *Id.* at p. 99.

[97] *Id.*

In addition, the ratemaking treatment afforded by the Decision unlawfully shifts the burden of proof to other parties rather than requiring PG&E to demonstrate the reasonableness of each of its proposals. While the Decision correctly states that PG&E has the burden of affirmatively establishing the reasonableness of all aspects of its application,[98] the Decision does not require PG&E to meet that burden, and instead shifts it to other parties. This is unlawful under Section 454[99] and contrary to decades of precedent established by the Commission.[100]

This error is plain in the Decision's analysis of whether PG&E's requested Implementation Plan costs should be disallowed because a prudent operator would have already made the improvements proposed in the plan. The Decision concludes that the costs should not be disallowed on that basis, but that "such management imprudence does provide an evidentiary basis for a reduction in Return on Equity due to management ineptitude."[101] If appropriately implemented, as discussed in the next section below, this can be a reasonable approach to the kind of widespread imprudence presented here. But the analysis in the Decision on the potential disallowance of Implementation Plan costs is legally and factually wrong and ignores PG&E's failure to meet its burden of proof in the record.

First, the Decision notes that TURN failed to show that PG&E already received funding for these activities.[102] That question turns the burden of proof upside down. The correct question is whether PG&E showed that its request is reasonable by, among other things, showing that it did not receive such funding already.[103] In many prior decisions, the Commission has noted that it is not up to

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[98] Decision at pp. 41-42.

[99] Pub. Util. Code § 454 requires a utility to make a showing and the Commission to make a finding that any new rate or charge is justified. See, e.g., 10-06-048 at 14.

[100] The Decision in footnotes 30 and 31 cites D. 09-03-025 and D. 08-12-058, both of which correctly discuss this issue.

[101] Decision at p. 54.

[102] *Id.* at p. 53.

[103] Under Public Utilities Code § 451, the Commission has the obligation to ensure that ratepayers are paying only reasonable charges whether or not TURN or any other party successfully questions the costs.

other parties to prove the unreasonableness of the utility's request.[104] In this instance, PG&E did not demonstrate that the costs it sought to recover were "incremental" and therefore reasonable, even though that is what it claimed. PG&E presented only the most cursory analysis, limited to funding it received in the last Gas Accord proceeding.[105]

Second, the Decision finds that "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."[106] There is no evidence the record to support that finding. The Decision *speculates* that ratepayers paid lower rates than they would otherwise have paid if PG&E had been doing the safety work it needed to do.[107] The Commission cannot assume this simply because other parties did not show the contrary.[108] This unsupported speculation is not evidence and provides no support for the Decision's ratemaking determinations.

Finally, the adoption of an 11.35% return on equity, as opposed to the 6.05% in the Proposed Decision, is not supported by the record. The Decision rewards PG&E with a very generous return on equity, even though these expenditures are necessitated by PG&E's "long-standing avoidance of sound, safety-engineering-based decision-making in favor of financially-motivated nominal regulatory compliance."[109] This particularly makes no sense in light of the Decision's acknowledgement that an

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[104] See, e.g., D. 08-12-058 at p. 18; and D. 06-05-016 at p. 7. (The utility "has the burden of affirmatively establishing the reasonableness of all aspects of its application. Intervenors do not have the burden of proving the unreasonableness of [the utility's] showing.").

[105] Exhibit 2 (PG&E Direct Testimony Ch. 3-32 and 3-38). Even this limited comparison, however, is inapt as the record clearly demonstrates that PG&E's historic operations were deficient. The more proper comparison is to what should have been done has PG&E been complying with all relevant safety standards.

[106] Decision at p. 54.

[107] The only support for this conclusion offered by the PD is footnote 43, which posits a hypothetical case. A hypothetical is not evidence.

[108] Similarly, the Decision misapplies the burden of proof in its treatment of Interim Safety Measures and costs for Program Management of the Implementation Plan. The Decision approves both of these items because "No party objected."(*Id.* at p. 77.) The Decision skips two steps here. First, it fails to ask whether PG&E demonstrated that the proposed costs are reasonable. Second, it makes no findings exercising the Commission's independent obligation to review the proposed costs and determine that they are in fact reasonable in light of the record.

[109] *Id.* at 104-105.

adjustment to return on equity can be used to address inefficient or ineffective management.[110] Having established PG&E's management imprudence, the Decision finds that particular costs should not be disallowed but that the imprudence "does provide an evidentiary basis for a reduction in Return on Equity due to management ineptitude."[111] Yet, the Decision makes no such reduction, thus requiring ratepayers to pay for PG&E's imprudence.

The Decision fails to correctly apply the mandate of Sections 451, 454, and 463, which is that unreasonable or imprudent costs *may not* be included in rates. The Commission lacks the discretion to find that ratepayers should pay such costs, yet that is exactly what resulted from the Decision's reversal of the modest adjustment to the return on equity that was in the Proposed Decision. The adoption of a full return on equity for the work authorized in the Decision is not supported by the record, does not adequately reflect the nature and extent of PG&E's imprudence, and does not comport with the requirements of the law.

IV. CONCLUSION

The Commission should grant rehearing for the reasons stated.

Dated: January 29, 2013

Respectfully submitted,

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[110] *Id.* at 105.

[111] *Id.* at 54.