

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

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

I.12-01-007
(Filed January 12, 2012)

**PACIFIC GAS AND ELECTRIC COMPANY'S REQUEST
FOR OFFICIAL NOTICE**

MICHELLE L. WILSON
Pacific Gas and Electric Company
Law Department
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6655
Facsimile: (415) 973-0516
E-Mail: MLW3@pge.com

JOSEPH M. MALKIN
MICHAEL C. WEED
SCOTT A. WESTRICH
ERIC M. HAIRSTON
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Telephone: (415) 773-5505
Facsimile: (415) 773-5759
E-Mail: jmalkin@orrick.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: March 11, 2013

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

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

I.12-01-007
(Filed January 12, 2012)

**PACIFIC GAS AND ELECTRIC COMPANY'S REQUEST
FOR OFFICIAL NOTICE**

Pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, PG&E requests that the Commission take official notice of the following documents from the parallel proceeding, I.11-02-016 (Records OII). True and correct copies of the documents for which PG&E requests official notice are attached.¹

- Exhibit 1: Ex. Records CPSD-1 (CPSD's Revised Rebuttal Testimony of Julie Halligan) (revised, filed September 4, 2012) (CPSD/Halligan).
- Exhibit 2: Ex. Records CPSD-15 (Revised Table 1 of Supplemental Testimony of Margaret Felts) (CPSD/Felts).
- Exhibit 3: Ex. Records PG&E-1 (Rebuttal Testimony of Julie Halligan (filed August 20, 2012).
- Exhibit 4: Ex. Records PG&E-2 (PG&E's Redline Comparison of Original and Revised Rebuttal Testimony of Julie Halligan).
- Exhibit 5: Ex. Records PG&E-47 (PG&E data response including ASA B31.1.8 – 1955).
- Exhibit 6: Ex. Records PG&E-6 (CPSD's Response to PG&E's Data Request No. 12).
- Exhibit 7: Ex. Records PG&E-61 (PG&E's Response to the CPSD's Reports: Records Management Within the Gas Transmission Division of PG&E Prior to the Natural Gas Transmission Pipeline Rupture and Fire, San

¹ To minimize waste, from large documents PG&E attaches the face page and excerpts of the pages cited in the Opening Brief.

Bruno, California, September 9, 2010; Report and Testimony of Margaret Felts; and Testimony of Witnesses) (excerpted pages 3-60 and 3-61) (PG&E/Cowsert-Chapman).

- Exhibit 8: Records Reporter's Transcript Volume 1 (September 5, 2012) (excerpted pages 74, 80, 82-83, 85, 146, 161) (CPSD/Halligan).
- Exhibit 9: Records Reporter's Transcript Volume 2 (September 6, 2012) (excerpted pages 243-44) (CPSD/Felts).
- Exhibit 10: Records Reporter's Transcript Volume 3 (September 7, 2012) (excerpted page 443) (CPSD/Felts).
- Exhibit 11: Records Reporter's Transcript Volume 5 (September 11, 2012) (excerpted page 795) (PG&E/De Leon).
- Exhibit 12: Records Reporter's Transcript Volume 7 (September 13, 2012) (excerpted page 1086) (PG&E/Phillips).
- Exhibit 13: Records Reporter's Transcript Volume 10 (September 17, 2012) (excerpted pages 1509-1533) (PG&E/Cochran).
- Exhibit 14: Records Reporter's Transcript Volume 12 (September 19, 2012) (excerpted pages 1894, 1905-06, 1913) (PG&E/Lee).

Rule 13.9 provides that the Commission may take official notice of "such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq."

A. Official Notice Of Records In Related Enforcement Proceedings Is Proper

In determining whether it may properly take judicial notice of facts, a court may resort to "[a]ny source of pertinent information." Evid. Code § 454. Evidence Code Section 451(a) requires mandatory judicial notice of the "decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution." Evid. Code § 451(a). Section 452 provides that it is appropriate for a court to take judicial notice of official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States. Evid. Code § 452(c). It is also proper to take judicial notice of "[r]ecords of ... any court of this state," as well as "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Evid. Code § 452(d) & (h). Section 453 provides that granting a request under Section 452 is mandatory, where the requesting party: (1) gives sufficient notice to the adverse party, through

the pleadings or otherwise; and (2) includes sufficient information to enable the court to take judicial notice. Evid. Code § 453.

The Commission has routinely taken official notice of records in related proceedings. In *Application of Pacific Gas and Electric Company to Restructure and Establish Natural Gas Rates*, the Commission took official notice of the facts reflected in the exhibits and transcripts admitted into evidence in another proceeding. No. 99-011-053, Application No. 96-08-043, 1999 Cal. PUC LEXIS 843, at *8 (1999). Similarly, in *Investigation on the Commission's Own Motion into the Operations, Practices, and Conduct of Sonic Communications*, the Commission took official notice of the record in two related proceedings. Decision No. 95-03-016, 59 CPUC2d 30, 1995 Cal. PUC LEXIS 262, at *16 (1995). Numerous Commission decisions hold the same. *See, e.g., In the Matter of the Application of SCE Corp.*, Decision No. 91-05-028, 40 CPUC2d 159, 1991 Cal. PUC LEXIS 253, at *8-9 (1991) (noting that official notice was taken of pre-filed testimony, hearing exhibits, and transcripts in the parallel FERC proceeding to the extent they are specifically referred to or relied upon in briefs); *W. Victor v. GTE California Inc.*, Decision No. 98-07-021, 81 CPUC2d 34, 1998 Cal. PUC LEXIS 552, at *4 (1998) (taking official notice of exhibits and testimony in the cases decided in D.98-01-052).

B. The Cited Materials Are Relevant To This Proceeding

The San Bruno OII substantially relates to and overlaps with the Records OII. The parties are nearly identical,² the factual and legal issues overlap, many of the witnesses are the same, and the evidence in the proceedings is interrelated. Both OIIs proceeded on parallel courses, and the overlap of witnesses and evidence resulted in several joint San Bruno and Records OII evidentiary hearings, one of which also included the Class Location OII. The Commission recognizes the overlap and has ordered coordinated briefing among the San Bruno OII, the Records OII and the Class Location OII with respect to fines and remedies.

Notwithstanding its opposition to this Request,³ CPSD recognizes that these proceedings

² C.A.R.E. is a party to the Records OII, but submitted no testimony. Otherwise, the parties are identical.

³ On March 5, 2013, PG&E notified by email all parties in the San Bruno OII of its intent to request official notice of records in the related OIIs so that parties could refer to any and all relevant documents in their briefing and to ensure the ALJ and the Commission received a comprehensive record. At that time, PG&E contemplated requesting official notice of the entire record in the other OIIs, and asked the parties whether they would support the request. On March 7, 2013, Mr. Morris responded by email stating that CPSD was opposed to PG&E's request. On the same day, DRA stated its agreement with CPSD. None of the other parties responded.

are overlapping and interrelated. For example, Mr. Foss stated during evidentiary hearings:

These cases are all interrelated. The allegations have substantial amounts of overlap. . . . So this would be I think be a lot more concise. It would avoid overlap. And it would make a lot more sense in the end. (R.T. 1202-03 [CPSD arguing for coordinated briefing on fines and remedies].)

Your Honor, because of the overlap between this case and the recordkeeping case, Mr. Gruen has located those letters from CPSD to PG&E and either already put them into the record or intends to move them into the record. So I'm not going to do – because of the overlap, I'm not going to do it at this time. (Joint R.T. 1213.)

Due to the obvious relation between the Records and San Bruno OIIs, the ALJ ordered that Ms. Keas' testimony from the Records OII be admitted into the San Bruno OII:

ALJ YIP-KIKUGAWA: Are you planning to incorporate Ms. Keas' testimony from the records OII with San Bruno? I think you mentioned it real briefly at one point that that might be something you were considering.

MR. MALKIN: I may well have said that, and we're certainly open to that.

ALJ YIP-KIKUGAWA: Well, I mean it's --

MR. MALKIN: I guess thinking about that there's so much overlap in the proceedings, we had thought that that makes sense. And to the extent we don't think of it in advance, the testimony in the various proceedings is probably a proper subject of official notice in the other proceeding. So we're happy making it formal with respect to Ms. Keas and any other witnesses who overlap as well. The testimonies – her testimony overlaps somewhat but is also quite different in San Bruno.

ALJ YIP-KIKUGAWA: Okay. Mr. Foss, do you have any thoughts on that?

MR. FOSS: I have no objection, your Honor.

ALJ YIP-KIKUGAWA: Okay.

MR. LONG: Your Honor, I think that would be a helpful thing. It might help shorten some of our cross of Ms. Keas in the San Bruno matter.

ALJ YIP-KIKUGAWA: Okay.

ALJ WETZELL: All right. Well, we'll order that to happen then. That testimony is taken into the San Bruno proceeding.

MR. MORRIS: A point of clarification talking about cross-examination, and responding testimony is also consolidated into the proceeding with the other testimony?

ALJ YIP-KIKUGAWA: Yes.⁴

The parties also explicitly requested and agreed that Mr. Zurcher's testimony from the Records OII would be admitted into the record in the San Bruno OII:

MR. LONG: Another procedural matter that is not exactly germane to the CPSD motion. But we proposed on Friday that with respect to Witness Zurcher that his testimony in the recordkeeping proceeding be treated as joint testimony in this proceeding. And I'm not aware that any party had any objection to that. But one party that hadn't been consulted when had we proposed that on Friday was CPSD's San Bruno counsel. I understand that they have no objection to that.⁵

As these brief examples from the evidentiary record demonstrate, all parties recognized the substantial overlap and interconnection between the San Bruno OII and the Records OII, and in several instances expressly requested that the overlap be made formal.

The evidence for which PG&E requests official notice includes CPUC's written testimony, reporter's transcripts of oral testimony, and exhibits admitted into evidence in the Records OII proceeding. Each of these documents is relevant to the San Bruno OII and is a proper subject for official notice:

Exhibit 1 (Ex. Records CPSD-1) is CPSD's rebuttal testimony sponsored by Julie Halligan, CPSD's Deputy Director. Ms. Halligan's testimony addresses CPSD's use of Public Utilities Code Section 451 as the legal basis for alleged violations against PG&E. CPSD also relies on Section 451 in the San Bruno OII to support alleged violations, thus CPSD's use of Section 451 in the Records OII is relevant and important to the San Bruno OII. This is especially true given that Ms. Halligan revised her Section 451 testimony in the Records OII the night before the hearing, and CPSD asserts inconsistent standards in the San Bruno and Records OII regarding what Section 451 requires of PG&E ("good utility safety practices," "good engineering practices" or "best engineering practices"). Exhibit 1 is Ms. Halligan's testimony as revised just before the hearing.

⁴ Joint R.T. 623-25.

⁵ R.T. 527-28.

Exhibit 2 (Ex. Records CPSD-15) is CPSD's revised table of supplemental testimony sponsored by Margaret Felts. CPSD offered Ms. Felts' testimony in the Records OII on PG&E's alleged violations in gas recordkeeping, pipeline engineering, integrity management practices and requirements, and Rule 1.1 under Commission practice and procedure, among other things. In the San Bruno OII, CPSD similarly alleges that PG&E violated the law in the areas of recordkeeping, pipeline engineering, integrity management, and Rule 1.1. Ms. Felts' testimony regarding these matters is relevant to CPSD's allegations against PG&E. CPSD must stand behind the testimony of a witness it proffered as an expert.

Exhibit 3 (Ex. Records PG&E-1) is the original rebuttal testimony sponsored by Ms. Halligan, submitted August 20, 2012, which was later revised the night before the Records OII evidentiary hearing began. As stated with respect to Exhibit 1, Ms. Halligan's testimony addresses CPSD's use of Section 451 as a basis for alleged legal violations, which is directly relevant to CPSD's use of Section 451 to assert violations against PG&E in the San Bruno OII.

Exhibit 4 (Ex. Records PG&E-2) is a redline comparison, created by PG&E, of Ms. Halligan's original rebuttal testimony from August 20, 2012 (Exhibit 3, above) and her revised rebuttal testimony submitted the night before the Records OII hearing (Exhibit 1, above). Exhibit 4 is relevant to show CPSD's change in position regarding what Section 451 required of PG&E. CPSD asserts violations against PG&E in the San Bruno OII based on Section 451, thus how it uses that law to support alleged violations is relevant in this proceeding.

Exhibit 5 (Ex. Records PG&E-47) is a PG&E data response that attached the 1955 version of ASA B31.1.8. CPSD alleges several violations against PG&E in the San Bruno OII based on provisions contained in ASA B31.1.8 (1955). *See* Ex. CPSD-1 at 19-22 (CPSD/Stepanian). During a joint evidentiary hearing, Mr. Foss cross-examined PG&E witness David Harrison using this document (already identified as Ex. Records PG&E-47) without separately offering it into evidence in the San Bruno OII. Joint R.T. 383-84 (PG&E/Harrison). Given that CPSD bases alleged violations on it, Exhibit 5 is relevant to the San Bruno OII (and should already be in the record).

Exhibit 6 (Ex. Records PG&E-6) is a copy of a CPSD data response in the Records OII that discusses CPSD's basis for using Section 451 to alleged legal violations against PG&E. As discussed above, CPSD's use of Section 451 to support alleged violations is central to the San Bruno OII (as it is to the Records OII). A CPSD data response stating the basis for the legal

position CPSD is taking in an enforcement proceeding is relevant to that proceeding.

Exhibit 7 includes two pages excerpted from PG&E's written testimony. This testimony (from Christine Cowser-Chapman) responds to CPSD's allegations regarding historical pipeline leak data and its significance. CPSD alleges in the San Bruno OII that PG&E's past treatment of historical leak information contributed to and/or constituted a violation of law related to the Segment 180 rupture. *See, e.g.,* Ex. CPSD-1 at 26 (CPSD/Stepanian). The excerpts from PG&E's testimony are directly relevant to CPSD's allegations.

Exhibits 8 through 14 contain excerpts from Reporter's Transcripts in the Records OII. Each of these Exhibits is relevant to the San Bruno OII and is proper for official notice.

Exhibit 8 is excerpts from the oral testimony by Ms. Halligan addressing CPSD's use of Section 451 to assert violations of law against PG&E. As the Deputy Director of CPSD, Ms. Halligan's testimony regarding CPSD's enforcement positions is relevant to CPSD's allegations in the San Bruno OII based on Section 451.

Exhibit 9 and Exhibit 10 are excerpts from the oral testimony from Ms. Felts. As noted, CPSD offered Ms. Felts as an expert witness in multiple areas, including areas which CPSD has alleged legal violations against PG&E in the San Bruno OII. Ms. Felts' testimony on behalf of CPSD is relevant to CPSD's allegations in the San Bruno OII, and CPSD should be required (and willing) to stand behind Ms. Felts' opinions and testimony.

Exhibit 11 is an excerpt from the cross-examination by CPSD of PG&E witness, Cesar De Leon. This testimony relates to CPSD's basis for alleging violations of law against PG&E, including CPSD's interpretation and application of pipeline safety rules and Section 451. As demonstrated above, the legal positions CPSD takes in one enforcement proceeding are relevant to the legal positions it takes in another related proceeding.

Exhibit 12 is an excerpt from CPSD's cross-examination of PG&E witness Steve Phillips. In this excerpt, Mr. Morris states CPSD's legal position regarding the appropriate interpretation of a code section. Mr. Morris' statements are directly relevant to CPSD's interpretation and application of Section 451 in the San Bruno OII.

Exhibit 13 contains excerpts from the testimony of PG&E witness Kerry Cochran addressing the Brentwood video recording system. CPSD alleged a violation against PG&E related to the Brentwood video recording in both the Records OII and the San Bruno OII. This testimony is relevant in the San Bruno OII; it is also necessary because CPSD neither pursued nor

withdrew their alleged violation in their San Bruno OII rebuttal testimony or during the evidentiary hearing.

Exhibit 14 is excerpts from the testimony of Chi-Hung Lee addressing the significance of the 1988 leak on Line 132. CPSD asserts in the San Bruno OII that the 1988 leak is critical information that should have caused PG&E to take different actions in its integrity management program with respect to Segment 180. Mr. Lee's testimony is directly relevant to that issue, and is even more significant in the San Bruno OII where CPSD did not offer any expert testimony regarding leaks or integrity management.

As the discussion above demonstrates, good cause exists for the Commission to take official notice of each of these Exhibits. *See, e.g.*, Decision No. 99-011-053, Application No. 96-08-043, 1999 Cal. PUC LEXIS 843, at *8 (1999) (taking official notice of the facts reflected in the exhibits and transcripts admitted into evidence in another proceeding); Evid. Code §§ 451-454. Inasmuch as each of the parties to this proceeding is also a party to the Records OII, there can be no prejudice from taking official notice of these matters.

Respectfully submitted,

MICHELLE L. WILSON

JOSEPH M. MALKIN
MICHAEL C. WEED
SCOTT A. WESTRICH
ERIC M. HAIRSTON

By: */s/ Michelle L. Wilson*

MICHELLE L. WILSON

By: */s/ Joseph M. Malkin*

JOSEPH M. MALKIN

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6655
Facsimile: (415) 973-0516
E-Mail: mlw3@pge.com

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Telephone: (415) 773-5505
Facsimile: (415) 773-5759
E-Mail: jmalkin@orrick.com

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: March 11, 2013

I.12-01-007

PG&E'S REQUEST FOR OFFICIAL NOTICE

EXHIBIT 1

Records Ex. CPSD-1

**(CPSD's Revised Rebuttal Testimony of Julie Halligan)
(revised, filed September 4, 2012) (CPSD/Halligan)**

Docket: : I.1 1-02-016
Exhibit Number : _____
Commissioner : M. F. lorio
Admin. Law Judge : A. Yip-Kik ugawa
Witness : J. Ha lligan



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

**REVISED REBUTTAL TESTIMONY
OF JULIE HALLIGAN**

I.11-02-016

San Francisco, California
August 20, 2012

1 **I. INTRODUCTION**

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

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

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

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

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

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

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

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

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

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

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

² PG&E Response Testimony Page 1-12.

³ PG&E Response Testimony Pages 1-13 to 1-15.

⁴ PG&E contends this with respect to records Ms Felts has found as inadequate to safely track the location, age, and characteristics of re-used pipe (PG&E response p. 3-28), deficient weld records (Id at 3-54 through 3-37), deficient records needed to establish transmission pipe overpressure before federal integrity management guidelines explicitly required the information (Id at 3-68), and deficient leak records (Id at 3-64 and 3-65).

⁵ California Public Utilities Code Section 451 provides in part, “Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities. . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

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

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

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

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

⁶ PG&E Response Testimony, Chapter 1 Appendix B, June 20, 2011, Testimony of Cesar De Leon.

⁷ Ibid. at Pages 1B-15 and 1B-16.

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

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

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

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

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

⁸ For a discussion on the requirements for a utility to generally promote the safety of its own system, see Section II. B.

⁹ PG&E Response Testimony, Chapter 1 Appendix B, June 20, 2011, Testimony of Cesar De Leon, Page 1B-15.

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

¹¹ California Public Utilities Commission Decision 61269, “Investigation into the Need of a General Order Governing Design, Construction, Testing, Maintenance and Operation of Gas Transmission Pipeline Systems.”, Page 12, Finding and Conclusion Number 8, December 28, 1960.

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

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

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

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

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

¹² CPSD does not concede that any of these efforts are proper remedial actions.

¹³ I.11-02-016 Assigned Commissioner's Scoping Memo and Ruling, 11/21/2011, Page 2.

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

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

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

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

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

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

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

4 CPSD agrees that since the compliance with ASME Standard B31.8 was mandated
5 in the Commission's General Order No. 112, that any *new* violation thereafter should
6 only count as a violation of the General Order, which may be a continuing violation.

7 This is true whether reference in CPSD's testimony is made to a violation of the ASME
8 Standard B31.8 or to General Order 112 through General Order 112-E.

9

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

I.12-01-007

PG&E'S REQUEST FOR OFFICIAL NOTICE

EXHIBIT 2

**Ex. Records CPSD-15
(Revised Table 1 of Supplemental Testimony of
Margaret Felts) (CPSD/Felts).**

Docket: : L11-02-016
Exhibit Number : CPSD 15
Commissioner : M Florio
Admin. Law Judge : Yip-Kikugawa
CPSD Project Mgr. : Robert Cagen
:



**Consumer Protection and Safety Division
California Public Utilities Commission**

**Revised Table 1
of
Supplemental Testimony
of
Margaret Felts**

San Francisco, California
September 10, 2012

RE: REVISED TABLE 1 OF MARGARET FELTS

The purpose of revising Table 1 to Margaret Felt's March 30, 2012 testimony is to clarify that CPSD does not seek to count a single violation multiple times. CPSD does not seek multiple penalties for a single PG&E action or omission listed on the numbers 1 through 27. CPSD will not seek multiple penalties because a violation in 1962, for example, appears to violate three standards - Section 451, ASME standards of 1961, and General Order 112. In such an instance we will count the violation or the continuing violations of only one of those standards at a time, not all three. This does not preclude CPSD from counting any of the 27 violations as a continuing violation from the first day of the violation, including Section 451 violations, which occurred prior to the Commission's adoption of General Order 112. It simply means that CPSD will avoid duplicating or triplicating the violation when the substantive basis for the violation is the same.

Neither is the purpose of the clarification designed to provide a legal or witness opinion of any kind, and in particular whether one or another law pre-empts or displaces any other law or prevents its application. CPSD expects to address such matters in the briefs.

1 **Table 1 - Violations related to the San Bruno Incident**

2 Records Violations relating to Line 132, Segment 180, San Bruno Incident

- 3 1. No records for salvaged pipe installed into Segment 180¹⁸
4 Violation of Public Utilities Code Section 451¹⁹1951-2010
5 (Also: Potential Violation of California Public Utilities Act Article II
6 Sec. 13(b)²⁰ pre 1951)
- 7 2. Failure to create/retain construction records for 1956 project GM 136471²¹
8 Violation of Public Utilities Code Section 451.....1956-2010
- 9 3. Failure to retain pressure test records for L-132, Segment 180²²
10 Violation of Public Utilities Code Section 451195561-2010
11 (ASME Standards Section B31.8²³1955-2010)
12 (General Orders 112, 112A, and 112B Section 107²⁴ ..1961-1970)
- 13 4. Lost underlying records to support MAOP of 390 on Segment 180²⁵
14 Violation of Public Utilities Code Section 451.....1977-2010
15 (Violation of ASME Standards Section B31.8.....1977-2010)
- 16 5. Failure to Follow Procedures to Create Clearance Record²⁶

¹⁸ Felts Testimony, Section 2.1

¹⁹ Since 1951 Cal. Pub. Util. Code §451 has required that, “Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities. . .as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

²⁰ From 1911 to 1951, Cal. Pub. Util. Act, Article II, §13(b) required that, “Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public. . .” Therefore, from 1911 until the present, this law and Cal. Pub. Util. Code §451 have consistently required PG&E to maintain instrumentalities, equipment, and facilities to promote the safety of their respective patrons, employees and the public.

²¹ Felts Testimony, Section 2.1.

²² Felts Testimony, Section 2.1

²³ To see the rules underlying ASME standard violations in Table 1, please refer to Felts Testimony (Exhibit 1), Appendix 8.

²⁴ Section 107 of each of these versions of General Order 112 required compliance with ASME standard

²⁵ Felts Testimony, Section 2.2 (including Appendix 1)

1	Violation of Public Utilities Code Section 451.....	2010
2	6. Out-of-date Operations and Maintenance instructions at Milpitas Terminal ²⁷	
3	Violation of Public Utilities Code Section 451.....	1991-2010
4	7. Out-of-date Drawing and Diagrams of the Milpitas Terminal ²⁸	
5	Violation of Public Utilities Code Section 451.....	2008-2010
6	(PG&E internal policies requiring retention of eng. records ²⁹ 2008-2010)	
7	8. No Back-up Software at the Milpitas Terminal ³⁰	
8	Violation of Public Utilities Code Section 451.....	1991-2010
9	9. Unsafe design of Supervisory Control And Data Acquisition System ³¹	
10	Violation of Public Utilities Code Section 451.....	2008-2010
11	10. Emergency Response Plans too Difficult to Use ³²	
12	Violation of Public Utilities Code Section 451.....	Apr 2010-Sept 2010
13	11. Operated L-132 in excess of 390 MAOP (1 day each year) ³³	
14	Three Violations of Public Utilities Code Section 451.....	2003, 2008, 2010
15	12. Failure to Attempt to Preserve Video Recordings that PG&E Believed Was on	
16	Brentwood Camera 6	
17	Violation of Commission Resolution Number L-403.....	2010-2012
18	(Preservation Order from Commission Executive Director 2010-2012)	
19	13. PG&E's Contradictory Data Responses Re Recorded Brentwood Camera 6 Video	

²⁶ Felts Testimony , Section 2.3

²⁷ Felts Testimony, Section 2.4

²⁸ Felts Testimony, Section 2.5

²⁹ Felts Testimony, Appendix 8 (engineering records row). In particular, PG&E internal policies shown in its documents P2-212, P2-225, and P2-227 each require that "Records pertinent to the constructed facility retain until superseded or 6 years after the facility is retired". Moreover, PG&E internal policy in its documents P2-230 mandates retaining engineering records for 6 years after the facility is retired.

These policies apply from 1964 to 2010.

³⁰ Felts Testimony, Section 2.6

³¹ Felts Testimony , Section 2.7

³² Felts Testimony, Section 2.8

³³ Felts Testimony, Section 2.2 and Attachment 1 plus Attachment 1 Exhibits

1 Violation of Commission Rules of Practice and Procedure Rule 1.1. 2011 or 2012
 2 14. PG&E’s Data Responses Did Not Identify All of the People in Milpitas Handling
 3 the Pressure Problem on September 9, 2010
 4 Violations of Commission Rules of Practice and
 5 Procedure Rule 1.1.....October 10 and December 17, 2011

6 15. INTENTIONALLY LEFT BLANK^{34 35}

7
 8
 9

10 General Records Violations for all Transmission including 132

11 16. Job Files Missing and Disorganized³⁶
 12 Violation of Public Utilities Code Section 451.....1987-2010
 13 (ASME Standards Section B31.8.....1987-2010)
 14 (PG&E internal policies requiring retention of eng. records...1987-2010)

15 17. Pipeline History Records Missing³⁷
 16 Violation of Public Utilities Code Section 451.....1987-2010
 17 (ASME Standards Section B31.8..... 1987-2010)
 18 (PG&E internal policies requiring retention of eng. records...1987-2010)

19 18. Design and Pressure Test Records Missing³⁸
 20 Violation of Public Utilities Code Section 451.....1951-2010
 21 Violation of California Public Utilities Act Article II Section 13(b).....1930-1951
 22 (ASME Standards Section B31.8.....1955-2010)
 23 (General Orders 112, 112A, and 112B Section 107.....1961-1970)
 24 (PG&E internal policies requiring retention of eng. records 1964-2010)

³⁴ Intentionally left blank.

³⁵ Intentionally left blank.

³⁶ Felts Testimony, Section 4.2

³⁷ Felts Testimony, Section 4.1.1 – 4.1.2

³⁸ Felts Testimony, Section 4.3

1 19. Weld Maps and Weld Inspection Records Missing or Incomplete³⁹

2 Violation of Public Utilities Code Section 451.....1951-2010

3 Violation of California Public Utilities Act Article II Section 13(b).....1930-1951

4 (49 CFR 192.241 and 192.243⁴⁰.....1970-2010)

5 (ASME Standards Section B31.8.....1955-2010)

6 (General Orders 112, 112A, and 112B Section 107.....1961-1970)

7 20. Operating Pressure Records Missing, Incomplete or Inaccessible⁴¹

8 Violation of Public Utilities Code Section 451.....1951-2010

9 Violation of California Public Utilities Act Article II Section 13(b).....1930-1951

10 (ASME Standards Section B31.8.....1955-2010)

11 (General Orders 112, 112A,112B, 112C, 112E, Section 107.....1961-2010 ~~1970~~)

12 (PG&E internal policies requiring retention of eng. records -1964-2010)

13 21. Pre-1970 Leak Records missing, incomplete and inaccessible⁴²

14 Violation of Public Utilities Code Section 451.....1951-2010

15 Violation of California Public Utilities Act Article II Section 13(b).....1930-1951

16 (ASME Standards Section B31.8.....1955-2010)

17 (General Orders 112, 112A, 112B, 112C, 112E Section 107.....1961- 2010 ~~1970~~)

18 22. Post 1970 Leak Records incomplete and inaccessible⁴³

19 Violation of Public Utilities Code Section 451.....1970-2010

20 (ASME Standards Section B31.8.....1970~~55~~-2010)

21 (~~General Orders 112, 112A, and 112B Section 107.....1961-1970~~)

22 (PG&E internal policies requiring retention of leak repair records⁴⁴ 1994-2010)

³⁹ Felts Testimony, Section 4.4

⁴⁰ Felts Testimony, Appendix 8.

⁴¹ Felts Testimony, Section 4.5

⁴² Felts Testimony, Section 4.6

⁴³ Felts Testimony, Section 4.6

⁴⁴ Felts Testimony, Appendix 8 (Inspection Records-Leak Repair of Pipe Exposure Row). In particular, PG&E internal policies shown in its documents P2-212, P2-225, P2-227, and P2-230 each require that

1 (PG&E internal policy requiring retention of leak survey maps⁴⁵2010)

2 23. Records to track salvaged and reused pipe missing⁴⁶

3 Violation of Public Utilities Code Section 451.....1954-2010

4 (PG&E internal policies requiring retention of eng. records April)⁴⁷1994-2010

5 24. Bad data in Pipeline Survey Sheets and the Geographic Information System⁴⁸

6 Violation of Public Utilities Code Section 451.....1974-2010

7 (PG&E internal policies requiring retention of eng. records..1974-2010)

8 25. Use of an Integrity Management Risk Model that uses inaccurate data⁴⁹

9 Violation of Public Utilities Code Section 451.....2004-2010

10 26. 1988 weld failure – no Failure Report⁵⁰

11 Violation of Public Utilities Code Section 451.....1988-2010

12 27. 1963 weld failure – no Failure Report⁵¹

13 Violation of Public Utilities Code Section 451.....1963-2010

inspection records for leak repairs or pipe exposure be kept for the life of the facility. These policies apply from 1994 to 2010.

⁴⁵ Felts Testimony, Appendix 8 (Leak Survey Maps row). In particular, PG&E policy P2-220 requires keeping leak survey maps for nine years. This policy is effective as of 2010.

⁴⁶ Felts Testimony, Section 4.7

⁴⁷ Felts Testimony, Appendix 8 (engineering records row). In particular, PG&E internal policies shown in its documents P2-212, P2-225, and P2-227 each require that “Records pertinent to the constructed facility retain until superseded or 6 years after the facility is retired”. Moreover, PG&E internal policy in its documents P2-230 mandates retaining engineering records for 6 years after the facility is retired. These policies apply from 1994 to 2010.

⁴⁸ Felts Testimony, Section 5.0

⁴⁹ Felts Testimony, Sections 3.0-4.0

⁵⁰ Felts Testimony, Section 4.4

⁵¹ Felts Testimony, Section 4.4