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I. Introduction and Summary

CALifornians for Renewable Energy (CARE) hereby submits its opening brief pursuant to the requirements of the California Public Utilities Commission (CPUC or Commission)'s Rule of Practice and Procedure ("Rule") 13.11. CARE believes that the violations identified in this proceeding ignore the important issue of whether Pacific Gas and Electric Company's (PG&E)'s compliance with the applicable CPUC rules, orders, and regulations at the time of the alleged violations and under the oversight of the CPUC staff constitutes compliance with California Public Utilities (PU) Code section 451. CARE doesn't believe that the CPUC regulatory process was subverted when line 132 was constructed and began operation. CARE recommends that only the violations of a current nature be considered if there is to be no further evidence introduced of the CPUC regulatory climate at the time of the alleged violations because it is too difficult to determine what the CPUC might have done if presented with arguments about required record keeping methods in the 1950s when the pipe that is now PG&E gas transmission line 132 was installed.

The parties' witnesses made statements of violations of business and operations records that were not evaluated according to traditional CPUC ratemaking criteria and so may or may not be applicable to PG&E's gas system operations. The CPUC has always, according to all of CARE's findings, evaluated proposals to modify PG&E's operations by first determining the effect on the workability of PG&E's system and also the cost to the ratepayers. The CPUC today should not fine PG&E without knowing how PG&E's operations would have performed if PG&E's record keeping practices in the 1950s that are cited as violations by the parties to this proceeding had been different.

The CPUC's staff reviewed PG&E's gas system and its operations and maintenance costs during numerous proceedings since 1955 yet there were no reports or criticisms of the records management system or the integrity controls that PG&E used. CARE believes that this lack of enforcement activity at the time that the pipeline was constructed and began operating indicates that PG&E's operations complied with the industry standards for gas pipeline operations then in existence. While the CPUC has the authority to penalize PG&E for activities that the CPUC already approved, it is not a useful endeavor. The purpose of this enforcement action should be to prevent another event resulting in the injury and loss of life.

The CPUC's Consumer Protection and Safety Division (CPSD), now named the Safety Enforcement Division, presented its analysis of the state of records management within the Gas Transmission Division of Pacific Gas and Electric Company prior to the Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California September 9, 2010. The analysis listed violations of the California Public Utilities Code, CPUC General Orders, and the engineering requirements from the American Society of Mechanical Engineers (ASME).

CARE believes that the violations that occurred in the current regulatory climate are addressed in the common outline for the opening brief in Section V., Violations 12 – 14. The other violations haven't been developed properly because they do not explain what they would have cost the rate payers to implement and do not analyze the likely impact on the PG&E gas operations. CARE recommends that these undeveloped violations be the subject of a new proceeding directing the parties to address the viability of the PG&E gas system using different records management practices if the violations are to be the reason for penalizing PG&E for its records management actions. The violations found by the City and County of San Francisco (CCSF) in Section VII, the Utility Reform Network (TURN) in Section VIII, and the City of (San Bruno) in Section IX will be addressed in CARE's reply brief because CARE is not certain what those violations may be.

CARE hopes that the outcome of this proceeding reduces the chance for a gas pipeline explosion from happening again in a heavily populated area. CARE's evaluation of the proceeding is that there are two ways to try to achieve this goal: 1) to punish Pacific Gas and Electric Company (PG&E) by using the CPUC's authority to order penalties that are contrary to PG&E's interests and 2) to develop regulations and enforcement techniques that will lessen the chance of another gas pipeline explosion from happening regardless of PG&E's actions (the goal of Rulemaking (R.)11-02-019).

The second method was tried in the 1955 through 1957 when the pipeline was installed. The CPUC's Gas Section developed a code prescribing standards for construction, maintenance, and operation of gas transmission lines. The Public Utilities Commission Annual Report issued in 1957 stated that the Gas Section had enforced these new standards by a physical examination of all the regulated facilities to determine whether PG&E fully complied with General Order 94-A. In 2010, the pipeline that was inspected by the CPUC in 1957 leaked and caused fires.

Investigation 11-02-016 was started to determine whether PG&E's record keeping methods are among the causes for that natural gas leak.

The National Transportation Safety Board (NTSB) final report on the San Bruno gas leak states that the maximum operating pressure established for line 132 in 1970 was faulty¹ but neither the CPUC nor the NTSB exercised their regulatory authority to inspect it. CARE believes that the reason is that these governmental agencies had no reason to expect there to be a problem, just as PG&E had no reason to either. The CPUC's rebuttal testimony² states that a regulated utility had and has a duty to promote the safety of its system by properly maintaining and managing its records. CARE believes that the CPUC did not issue an order specifying the required practices for maintaining and managing PG&E's gas system records because the CPUC depended on periodic CPUC staff reviews of PG&E's records during general rate cases to ensure that PG&E was properly managing its records. In fact, the CPUC staff has had opportunities to review PG&E's records and records management practices since 1955 and never identified any problems. The CPUC staff includes personnel with current status as professional engineers who reviewed everything and found nothing to be improper. Any finding of problems would be communicated to the CPUC commissioners who had the authority to order corrections and changes in record management practices and yet did not do so.

PG&E can be fined pursuant to PU Code section 451 for violating statutes, orders and regulations. The fact that the CPUC issued orders supporting its staff's findings after its staff reviewed PG&E's gas system means that PG&E was complying with PU Code section 451.

II. Background (Procedure/ Facts)

The CPUC has the authority³ to issue orders that implement tariffs and regulations. Tariff violations⁴ haven't been charged by any party. The violations charged are violations of

¹ Page 106, Pipeline Accident Report
Pacific Gas and Electric Company
Natural Gas Transmission Pipeline Rupture and Fire
San Bruno, California
September 9, 2010

Accident Report
NTSB/PAR-11/01
PB2011-916501

² August 20, 2012, Rebuttal Testimony of Julie Halligan, p.4, lines 1-2.

³ PU Code section 701

the CPUC's General Orders and engineering practices that hadn't become an enforceable regulation.

CARE believes that the natural gas transmission line construction and operations were overseen by the authorized regulatory agencies and there is no indication that there were any violations of applicable rules, laws, or regulations.

CARE believes that the violations listed by the charging parties should be considered in the context of the regulatory climate at the time of the violations. The CPUC should always consider the cost of programs as a factor before issuing an order. The CPUC depended on staff reviews of record management practices during general rate cases because staff recommendations have to be considered in the context of cost to the ratepayers as well as the effect of implementing staff recommendations on the PG&E gas system's operability. Before PG&E's record keeping during construction, and maintenance during operations are deemed to be deficient, the CPUC should ask for a showing of how much the alternate record keeping practices recommended would have cost compared to those used and an analysis of how PG&E gas transmission operations would have differed.

CARE believes⁵ that if the Commission had been presented the alternate record keeping practices that are implicit in the alleged violations recommendations made in this proceeding, at the time of that the violations occurred (those record keeping violations made in the opening brief sections V., VI., VII., VIII. and IX), that the Commission would have considered the cost of those recommendations and asked for reports and evidence of the effect that the new record keeping practices would have on the way that gas transmission system operated in California. The charging parties' omission of considering the cost and the impact on PG&E's natural gas transmission system operations of the their violations recommendations means that the CPUC should start a new proceeding to determine how the PG&E's natural gas transmission system

⁴ "The tariff, with any limitations of liability specified therein, is the document that governs the rights and liabilities between a public utility . . . and its customers." Pink Dot, Inc. v. Teleport Commc'ns Grp., 89 Cal. App. 4th 407, 410 (Ct. App. 2001) . . . But see Pink Dot, Inc., 89 Cal. App. 4th at 419 ("No California case holds that the terms of a PUC tariff can insulate a public utility from its intentionally tortious conduct.")⁴. CARE believes that PG&E's actions in siting, constructing, installing, operating and maintaining their natural gas transmission system does not constitute intentionally tortious conduct.

⁵ There is no practical way for CARE to search all the orders and resolutions to be able to state for certain that the CPUC has always done so, but CARE believes that the CPUC has always considered the cost of complying with its orders.

would likely have operated and the consequent cost implications of those recommendations before determining whether PG&E should be fined.

The witnesses alleging violations (CPSD, CCSF, TURN, and San Bruno witnesses) did not consider⁶ the cost of their recommendations or how viable the recommendations would have been at the time that the gas transmission pipelines were manufactured and installed. Therefore, CARE disagrees with many⁷ of the violations listed by the testimony submitted by the parties.

The Revised Report and Testimony of Margaret Felts I.11-02-016 dated March 16, 2012, Exhibit CPSD-2, states⁸ that without credible records, there is no way to know the kinds of pipe remaining underground.

CARE believes that the CPUC's preferred remedy for PG&E's violations in this proceeding should be to prevent future gas pipeline accidents in high consequence areas by assessing a penalty on PG&E equal to the cost of replacing all similar pipelines in the PG&E natural gas service area. PG&E should be given an incentive to reduce the penalty by hiring Californians to produce and install the new pipelines as well as remove and dispose of the old ones. This will be a very expensive endeavor, but it is the only way to be assured that all the natural gas pipelines in PG&E's service territory are safe. The alternative is to continue operating the PG&E natural gas system as it has been operated using a modern records management system.

CARE believes that a penalty paid to the State's treasury would not guarantee safe operations of PG&E's gas transmission system. Replacement of the old natural gas pipelines now in service would. The CPUC audited PG&E gas system manuals and operational practices frequently during the period from 1955 before the gas pipeline ruptured and caused the San Bruno tragedy. The first complete review was reported in the Public Utilities Commission Annual Report issued in 1957 and was followed by reviews during general rate cases and Energy Cost Adjustment Clause⁹ proceedings in the years preceding the San Bruno event. None of these reviews identified irregularities or non-compliance with CPUC requirements, orders, rules, or regulations, yet the pipeline ruptured in September 2010.

⁶ Tr Julie Halligan CPSD witness Sept. 5, 2012, p. 28 lines 13 - 16, and Duller and North CPSD witnesses, Sept. 10, 2012, pp. 620 - 624.

⁷ CARE believes that only the alleged record keeping transgressions that could have been implemented at the time they occurred should be considered violations.

⁸ P. 2, lines 15-20.

⁹ The accounts in which fuel and purchased power costs were tracked prior to the time (1998) that electric deregulation occurred.

III. Legal Issues of general applicability

The CPUC has not required record keeping practices specifying the principles stated in the Commission staff's violations reports in this proceeding for other utility companies that it regulates. In fact there has been no CPUC order issued addressing record keeping methodology of which CARE is aware. Yet, the CPUC has statutory authority to require whatever record keeping practices that it believes to be necessary.¹⁰ Tariff violations¹¹ also don't address record keeping practices.

This lack of directives or criticism means that the CPUC did not find a problem with PG&E's record keeping practices or gas transmission system operational practices. Now, the CPUC is being asked to change that determination and find that PG&E did not safely operate its gas system. CARE recommends that the CPUC deny the alleged violations of improper record keeping and pipeline design and maintenance practices of the 1950s through the 2000s and instead only consider the current violations such as violations 12 - 14. The determination of proper practices was implicit in the CPUC's acceptance of PG&E's practices when they were conducted and a finding of improper practices many years later, after finding a gas transmission pipe leak, violates the regulatory compact that the CPUC has had with the utility companies that it regulates.

If PG&E caused failures in its gas pipeline operations and maintenance it is not because of violations of CPUC orders, rules, or regulations, it is because the operations and maintenance procedures PG&E chose did not prevent leaks and damage. The CPUC reviews, safety personnel inspections, and other proceedings all provided opportunities for the CPUC to exercise

¹⁰ In the Matter of the Updated and Corrected Application of GREAT OAKS WATER CO. (U162W) for an Order Authorizing an Increase in Rates Charged for Water Service, increasing the revenue requirement by \$ 1,846,100 or 14.94% in 2010, by \$ 254,425 or 1.79% in 2011, and by \$ 165,822 or 1.14% in 2012 Decision 12-10-045; Application 09-09-001 (Filed September 3, 2009) (Updated and corrected caption filed November 12, 2009) stated that the CPUC has authority to prescribe the form and manner of accounts and memoranda utilities are to maintain pursuant to PU Code sections 701 and 792, and 584, to order the furnishing of reports.

¹¹ "The tariff, with any limitations of liability specified therein, is the document that governs the rights and liabilities between a public utility . . . and its customers." Pink Dot, Inc. v. Teleport Commc'ns Grp., 89 Cal. App. 4th 407, 410 (Ct. App. 2001) . . . But see Pink Dot, Inc., 89 Cal. App. 4th at 419 ("No California case holds that the terms of a PUC tariff can insulate a public utility from its intentionally tortious conduct.")¹¹. CARE believes that PG&E's actions in siting, constructing, installing, operating and maintaining their natural gas transmission system does not constitute intentionally tortious conduct.

its authority yet nothing was done by the CPUC, the regulatory agency with the primary oversight authority.

This lack of oversight is continuing with the electric smart grid installation and operations. The California PU Code provides a mandate to the Commission to regulate the transmission and wires of the California electric system in code sections 330, 334, and 364, and the smart meters, synchrophasers of the smart grid have been installed and are operating yet the Commission has not begun a proceeding to specify the appropriate record keeping practices. The Commission has the authority to do so in PU Code section 761, and yet has chosen not to.

California PU Code section 451¹² states that PG&E is to provide utility service in a manner necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. The CPUC is the State agency mandated to determine whether PG&E provided utility service in the required manner. The CPUC's Gas Section inspected the facilities in question in 1956 or 1957¹³, after they were installed and began operations, and determined that the pipeline facilities and their installation met the requirements of that time. Additionally, the CPUC required PG&E to provide reports prepared by qualified outside inspectors of inspections made at ten and twenty year intervals. The CPUC kept copies of these reports after reviewing and accepting them. Routine daily, weekly, monthly, quarterly, and annual inspections were made by the utility employees¹⁴ and not submitted to the CPUC.

If it is determined that PG&E's gas operations record keeping was a cause of the September 9, 2010, gas leak in San Bruno, the CPUC can order PG&E to pay a penalty. CARE is concerned that the penalty be ordered for the cause of the leak, but not merely as an excuse to punish PG&E for the leakage of natural gas.

CARE's concern is the impact of the records management recommendations made in this proceeding on PG&E's gas pipeline operations, including cost and operational implications. The

¹² All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

¹³ Public Utilities Commission Annual Report for 1956-1957 on page 53.

¹⁴ Public Utilities Commission Annual Report for 1949-1950 on page 57.

records management alternatives referred to are a) those records management procedures that PG&E used during 1950 to 2010 and b) those records management procedures that the CPSD witnesses are stating that PG&E should have used during 1950 to 2010. CARE believes that the records management procedures that PG&E used during 1950 to 2010 should be evaluated to determine whether they were “cost effective, reliable and feasible.”¹⁵ The CPSD witnesses did not address the merit or functional aspects of their recommendations, so CARE believes that a new phase of the proceeding should be set to make these determinations. A new phase of the I.11-02-016 proceeding should compare the records management practices that PG&E used with those recommended by CPSD’s witnesses to evaluate the “cost effective, reliable and feasible” aspects of each before determining which practices PG&E should have used.

This proceeding is investigating PG&E’s violations of PU Code section 451 which states that violations of the California PU Code or CPUC orders, rules or regulations are violations of section 451. However, the criteria for making this determination are not addressed by the statute. CARE believes that the recommended records management practices should satisfy the criteria that the CPUC would use if adopting new records management practices such as is being done in the Rulemaking (R.) 11-02-019 proceeding.

R.11-02-019 states on page 9: “Our goal through all of these proceedings will be to establish rules and policies that accord safety of gas utility operations the highest level of significance. We must ensure that our gas utilities recognize that mere compliance is not enough. Safe pipeline operations must begin with utility management and the culture it creates in the workrooms and field crews of the utility. The pipeline operators must have a corporate ethic and workplace culture that places safety as their first responsibility.”

CARE believes that the CPSD recommendations, if they had been implemented during the 1950s, before PG&E’s gas transmission line No. 132 was installed, would have increased the cost of PG&E’s gas pipeline operations by requiring more records storage capacity and more employees to record data and manage the records storage operations. The CPUC did not issue an order directing the regulated utility companies to use specified records management techniques or to work to achieve specific records management goals.

The CPSD testimony addresses the cost issue in the Duller/North report on page 6-33, lines 1 – 5:

¹⁵ First Financial Network v. Pacific Bell, in footnote 16 *infra*, section 451 itself requires that all services provided by a public utility be such to promote the convenience of its customers.

1 The 210.4 series of standards showed several things. First guidance on records management was
2 focused on storage, archiving and document destruction. Second, in order to ‘save money’
3 guidance on records management was limited to removal of ‘inactive’ records with legal or
4 business retention requirements to the Record Center. This was initially at the discretion of the
5 General Office Departments’ and later on Divisions’ Heads.

The PG&E testimony addresses costs of the records management techniques recommended by CPSD in Dunn’s testimony on pages 29 -33 in which the costs of changing to these new document management practices are addressed by reviewing annual reports (10K filings with the United States Securities and Exchange Commission). These annual reports address the new requirement of “traceable, verifiable and complete” records for establishing a MAOP.

These reports identify the regulatory change as a new requirement that poses a potential risk to their future financial performance as the costs of implementation and impacts on future operations are not yet known. CARE believes that this uncertainty would have affected PG&E and the CPUC determinations of whether to specify records management techniques in the 1950s. Yet, the CPSD recommendations don’t address these very important issues about the costs and operational requirements if PG&E had implemented the records:

1. Which of the witnesses could have answered questions such as what impact would a particular records management recommendation have on the costs to ratepayers if that recommendation had been implemented during the period of review of PG&E’s records management practices in the I.12-02-016 proceeding? CARE asked CPSD witnesses Julie Halligan, Margaret Felts, and Dr. Duller and was told that the costs of their recommendations were not considered or calculated¹⁶.

1.a What impact would each of the records management recommendations have on PG&E’s daily, and monthly gas pipeline operations? CARE was informed that the CPSD witnesses had written a report and had no further statements to make about how their recommendations could affect gas pipeline operations.

1.b What difference in costs to the ratepayers can be expected to have occurred? CPSD witnesses stated that they did not address these issues.

¹⁶ Evidentiary hearing transcripts for September 5, 2012, Tr. page 20, line 1 through page 28, line 15, and September 10, 2012, page 620, line 10 through page 624, line 21.

California Public Utilities Code section 451

451. All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

This statute has not been reviewed by many courts of law and the CPUC is the agency charged with implementing it. The CPUC has written most of the interpretations of section 451. The findings of things that are “unjust or unreasonable” include 1) not following CPUC orders, 2) lying to the Commission¹⁷, 3) failing to follow PG&E’s internal operating standards¹⁸, and 4) failing to explain complex regulations to ratepayers.¹⁹ CARE believes that PG&E did not follow

¹⁷ Order Instituting Investigation (I.)12-04-011, April 19, 2012

Great Oaks collected substantial amounts of pump taxes from its ratepayers and chose not to make the pass-through payments to SCVWD. The Commission has a mandate to ensure that charges any public utility imposes are just and reasonable based substantially on complete and truthful information from the public utility it regulates. It is unjust and unreasonable for Great Oaks to withhold such material and controversial information from the Commission when it requests rate increases in future years.

Great Oaks should have disclosed in its GRC Application that it was withholding these payments and listed the litigation as a controversial issue, as required in D.07-05-062. Great Oaks’ withheld pump taxes incurred interest and penalty charges. Great Oaks’ failure to report its withholding of pump tax payments in its GRC Application potentially undermined the Commission’s ability to consider all facts in determining the reasonable test year and escalation years’ expense for its pump taxes.¹⁷ Therefore, Great Oaks appears to have violated PU Code Section 451.

¹⁸ *Decision 06-02-003 February 16, 2006* pp.

The rationale for the parties’ settlement consists of a three-part assessment that: (1) while PG&E’s operations of Mission Substation, and its response to the December 20, 2003 fire, did not violate any Commission General Orders pertaining to electrical systems; (2) nevertheless, PG&E did not implement its own internal recommendations, following the 1996 fire, regarding operational response procedures, the lack of smoke detection equipment, and the lack of fire barrier penetration sealing; and (3) thus, had PG&E implemented those 1996 recommendations, it is reasonable to conclude that the duration of the December 2003 fire and the associated outage, as well as the number of customers affected by the outage, would have been significantly reduced.

¹⁹ *Decision 02-02-027 February 7, 2002*, pp.

In the complex field of communications, no layman can be expected to understand the innumerable offerings under defendant's filed tariffs. When defendant sends out one of its communications consultants to a customer's place of business for the explicit purpose of discussing telephone service, the consultant should point out all the alternative communications systems available to meet the customer's needs. This duty is owed by defendant to its customers.

the CPUC's Executive Director's orders described in Violations 12 – 14 and recommends that a penalty be imposed.

IV. Other issues of general applicability

The OII²⁰ divided the proceeding into two phases. The first phase addresses:

1. Was PG&E's gas transmission pipeline recordkeeping and its knowledge of its own transmission gas system, in particular the San Bruno pipeline, deficient and unsafe?
2. Did PG&E's recordkeeping practices violate any provisions of the Public Utilities Code, General orders, or Commission decisions?

CARE believes that PG&E's employees were not aware of any regulatory requirements other than those included in CPUC and NTSB regulations. In this proceeding, the other parties' witnesses did not attempt to produce other regulatory requirements, but merely stated that engineering requirements from the ASME should have been followed. However, these witnesses are not experts in the area of gas pipeline operations. The parties making allegations of violations have not produced testimony from any gas pipeline operating company employees who contradict PG&E's witnesses in this proceeding. Therefore, CARE believes the PG&E witnesses when they state that they were following all the currently known practices used by others to operate and maintain their gas pipelines.

During the September 17, 2012, evidentiary hearing Reporter's Transcript (Tr), p. 1440, PG&E's Kris Vanessa Keas testified that Integrity management doesn't require keeping all the records CPSD's witness Ms. Felts testified to as being important. Tr. p. 1463, line 24 through p. 1464, line 11.

In the September 19, 2012, evidentiary hearing, the transcript²¹ page 1790, line 19 through page 1791, line 27, shows PG&E's Zurcher testifying that CPUC General Order 112 did

(First Financial Network v. Pacific Bell, D.98-06-014, (1998) 80 Cal.P.U.C.2d 407, 411, quoting H.V. Welker, Inc. v. P.T.&T. Co. (1969) 69 Cal.P.U.C. 579.)

The decision then concludes that, pursuant to section 451, Pacific Bell has the same duty to its residential customers. (D.01-09-058 at p. 14.)

²⁰ <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=444895>

²¹ The evidentiary hearing transcript clearly shows that the regulations and engineering practices from the period in question were not written, specific directives, but guidance for engineering professionals. Examples illustrating this are shown in the following excerpts from the transcripts for the evidentiary hearings:

not adopt the ASME standard B31.8. Zurcher added that “So I am offering you an opinion based on my reading of this that GO 112 does not incorporate ASME B31.8 for the purposes of design or maintenance.” Tr. P. 1791, lines 13-16.

Zurcher, “A To answer how I make an expert judgment, you have to look at everything and you have to put it in context. When I look at 103.7 it says specifically it shall apply to the design, construction, installation, inspection, testing, and safety aspects of the operation and maintenance of gas transmission distribution systems. That seems pretty clear to me and a pretty complete statement.

Why then, unless it was an intent, you know, by the Commission, which I honestly don't know. I don't have the case law behind me. I do not have all the preamble available to me. Why wouldn't they use those exact same words if they wanted to incorporate 31.8 in its entirety? That's my question to you. And as far as an expert in GO 112, I am not, but I am an expert in pipeline safety regulations at the federal level, and I understand, you know, at least at the federal level, you know, the intent of things like these rules and regulations.” Tr. p. 1792, line 7 through p. 1793, line 1.

And, “A If I understand your question correctly, there is no requirement that I maintain that source document. I have a pressure test record. I have the design information. I'm an engineer. I am sitting down and I am determining MAOP. Once I make that determination and put my name to it and it is on a spreadsheet or some other type of document, why would I need to retain that information just to confirm or prove at some point in the future that I actually performed the task that that I'm paid to do?

Q So the Commission staff seeking to verify design pressure is obligated to trust the representation of whoever hands the Commission staff that piece of paper showing the final MAOP number, is that your testimony?

A The entire chain, if I can answer this way, the entire chain of documentation, the way I'm reading your question here, is that -- is subject to confirmation. I have a record of pressure test, okay? How far back on the chain do I want to go? It's just a record of pressure test. It's a record.

It's something that somebody put together.

Would you want to go back further, then, and say show me, I need an affidavit or I need some other type of item of the person that performed the pressure test? I don't know how far back in the chain you go. In my opinion, once that information has been reviewed and represented on another record, retention of the previous documentation is not necessary.

Q So the Commission staff member is obligated to trust the representation of the operator; is that right?

A Yes, in the same manner the Commission person would trust the pressure test record and trust the specification and trust the material requisition forms.

Q But that documentation you just referred to would not be necessary in your view; isn't that right?

A Yes, in the same manner the Commission person would trust the pressure test record and trust the specification and trust the material requisition forms.

Q But that documentation you just referred to would not be necessary in your view; isn't that right?

Tr. Page 1827, line 1 through page 1828, line 17

And, “THE WITNESS: If the Commission inspected PG&E's facilities, say, in 1961 immediately after these rules went into effect and they were looking for compliance with the requirement to establish MAOP, in my opinion the only record the company is required to show them is that MAOP was in fact calculated. They do not have to provide any of the underlying information.

MR. LONG: Q So how would the Commission know that PG&E had even calculated a design pressure?

A They could ask them.

Q So they will rely on the verbal assurances of the company, is that -- you are saying that would be adequate?

A They may ask them and the company may have documentation to show them.

Q In order to establish compliance with the rule, the company would not need to show documentation that they had performed a calculation of design pressure; is that right? Is that your testimony?

A No. They need to say that they calculated MAOP. That's a record that is required to show compliance, I calculated MAOP. That's a record.” P. 1814, line 24 through p. 1813, line 22.

3. Did PG&E's recordkeeping practices violate any federal gas safety regulations and laws that the Commission is authorized to enforce in California?

4. Did PG&E's recordkeeping practices violate other recordkeeping-related rules or requirements regarding its procedures, training, and supervision?

CARE believes that the issue should be whether PG&E's recordkeeping practices were similar to the practices of other natural gas pipeline operating entities during the period in question. The CPSD Rebuttal Testimony of Julie Halligan, August 20, 2012, addresses this issue in section II. Other Gas Operators Record Keeping Practices, by simply denying PG&E's showings that PG&E's record keeping practices were similar to those used by other, similar entities during the periods in question.

CARE supports PG&E in this dispute because the CPSD witnesses have virtually no qualifications to make this determination. The current California rule is to allow the "gatekeeper" in this case, the assigned Administrative Law Judge, to determine which expert witness is most credible²². CARE believes that the PG&E witnesses are the only credible witnesses presented in this proceeding concerning the issue of whether other gas pipeline operators record keeping practices are relevant to determining the gas pipeline engineering practices during the period in question. A witness without a technical degree from a recognized university and who has not worked in the industry in question can testify from library research or from interviews of others, but does not have the expertise necessary to become an expert by education alone. CARE does not believe that the CPSD testimony explaining their alleged violations meets any standard of expertise necessary.

The CPUC inspected the pipeline in question soon after it was installed and began operations. This is stated on page 53 in the California Public Utilities Commission Annual Report issued in 1957. The inspection states that PG&E is in compliance with Order 94-A that includes the record keeping requirements for that year.

Therefore CARE believes that the CPUC can't penalize PG&E for not operating in a different, more costly manner 60 years later. *Smyth v. Ames*, 169 U.S. 466, 18 S.Ct. 418, 42 L.Ed. 819 (1898) at 546-47, 18 S.Ct. at 434 states "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience." This case addressed

²² *Sargon Enterprises, Inc. v. University of Southern California*, 55 Cal.4th 747, 781 (2012), 149 Cal. Rptr. 3d 614, 288 P.3d 1237

the investment made compared to the investment that would have been required if PG&E had installed another kind of pipe. And, if PG&E used a different method of record keeping, the method recommended by the CPSD witnesses, the costs of that method should be compared to the costs that PG&E received as reimbursement in rates.

In *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944), the Court held that regulatory commissions are not bound by any particular formula in determining rates, as long as the rates established "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed." 320 U.S. at 605, 64 S.Ct. at 289. The CPUC should determine what costs PG&E would have had if the CPSD recommendations are adopted and include those costs in the penalty calculations.

If the CPUC now believes that PG&E's record-keeping practices in 1955 were inadequate for 1955, the CPUC should make an estimate of the cost of the record keeping practices that the CPUC believes should have been used during that period, and include that cost in the rates that PG&E should have been able to charge ratepayers. After determining that cost, the CPUC should compare that cost to the benefit provided to evaluate whether the CPUC would have required those record keeping practices.

If the CPUC demonstrates that the costs of the recommended record keeping practices are similar to those practices that PG&E used, a penalty would be appropriate, but the CPSD witnesses stated that they did not consider the costs of their recommendations. Evidentiary hearing transcripts for September 5, 2012, Tr. page 20, line 1 through page 28, line 15, and September 10, 2012, page 620, line 10 through page 624, line 21. So, the CPUC should hold further proceedings to determine those costs.

Therefore, CARE believes that the CPSD witnesses do not have the credible credentials to function as experts in this proceeding for the alleged violations occurring when line 132 was constructed. This proceeding should be halted and a new proceeding begun with actual, credible witnesses presenting the case for penalizing PG&E for the September 9, 2010, natural gas explosion in San Bruno, California.

California Determination of Expert Witness Qualifications

Currently, the California courts require²³ the “gatekeeper” to determine the credibility of expert witnesses testifying before them. CARE believes that PG&E presented the only credible witnesses testifying about the issues of record keeping and engineering practices used to design, construct, and operate line 132.

V. Alleged Violations Predicated on the Reports and Testimony of Margaret Felts

A. Alleged Records Violations relating to Line 132, Segment 180, San Bruno Incident

Violation 1: Salvaged Pipe Records

CARE disagrees with this violation because there has been no showing that industry standards required the kinds of records described in the CPSD reports. Simply making assertions of what record keeping could have been does not meet the standard necessary to demonstrate a violation of PU code section 451 or even a violation of good business practices.

Perhaps the records could have been stored in a warehouse with records keeper personnel? Perhaps someone would be a librarian who could review the records periodically and send recommendations to the PG&E engineers who planned, designed, and installed line 132? CARE could not find an analysis of the cost of this and how these records were to be used. Cross examination questions posed to CPSD witnesses were responded to by stating that the cost and operability of the recommendations were not considered. The fact that the records were not used and the fact that the CPUC inspected and approved the project indicate that the creation and storage of records would not have been approved by the CPUC if PG&E had requested funding for keeping these kinds of records.

Violation 2: Construction Records for 1956 Project GM 136471

CARE has the same objection for this violation as stated above for Violation 1.

²³ Ibid.

Violation 3: Pressure Test Records

CARE has the same objection for this violation as stated above for Violation 1.

Violation 4: Underlying Records Related to Maximum Allowable Operating Pressure on Segment 180

CARE agrees that PG&E needs to keep data demonstrating the MAOP for its gas transmission lines. PG&E did not present²⁴ convincing evidence that it had operated line 132 at 400 psi during the prescribed period and therefore the pipeline should not have been operated at that pressure. PG&E's employees had to correct notations to resolve conflicting or incomplete records. However, the CPUC staff has had the opportunity to review these records and to recommend corrections and further testing to the CPUC, yet the CPUC staff never did. CARE believes that this alleged violation should not be the basis for penalizing PG&E because the data presented by the CPSD witnesses as evidence of violations has been known and reviewed by CPUC staff for decades.

Violation 5: Clearance Procedures

CARE disagrees with Violation 5 because the CPSD witnesses are not qualified to know what PG&E requires of its employees. The CPSD witnesses do not know how to operate a gas pipeline system and their statements about reviewing records ignores the practices that PG&E uses to operate its gas system.

Violation 6: Operations and Maintenance Instructions

PG&E needs to operate its facilities in a safe and efficient manner by providing accurate instructions for PG&E's employees to follow so that the public is assured that they are protected from unexpected equipment failure such as the gas pipeline fire and explosion of September 9, 2010. CPUC staff inspected these drawings and instructions periodically during field trips and investigations of costs requested in the various regulatory proceedings such as general rate cases and reasonableness case reviews of PG&E's operations.

Energy Resource Recovery Accounts (ERRA) or Energy Cost Adjustment Clause (ECAC) proceedings were held to review PG&E's operations to determine whether their purchasing costs for providing electric service to the rate payers was reasonable. These reviews by CPUC staff included field visits, records inspections, discovery, and meetings with PG&E's employees. CPUC staff conducted these periodic reviews for decades and have never identified

²⁴ PG&E Ex. No. 61, Chapter 4C

records management problems or recommended different records management procedures and practices. Therefore, the violations concerning PG&E's practices are questionable. If PG&E's records management practices were faulty and yet the regulatory agency charged with overseeing the operations did not find fault or recommend changes, CARE believes that PG&E cannot be charged with a violation of the CPUC regulatory regime or of subverting the CPUC regulatory processes. The fact that natural gas leaked from PG&E's transmission line 132 and caused fires was not a violation of the regulatory process used by the CPUC but instead was a result of the CPUC's regulatory regime.

Violation 7: Drawing and SCADA Diagrams of the Milpitas Terminal

CARE has the same objection to Violation 6 as stated above.

Violation 8: Back-up Software at Milpitas Terminal

CARE has the same objection to Violation 6 as stated above.

Violation 9: Supervisory Control and Data Acquisition System

CARE has the same objection to Violation 6 as stated above.

Violation 10: Emergency Response Plans I.12-01-007 et al.

CARE has the same objection to Violation 6 as stated above.

When an alarm occurs, a gas system operator's first responsibility is to analyze the data to develop a rapid understanding of the validity of the alarm. Operators do this by looking at data upstream and downstream of the data point to validate the condition. The most valuable data to an operator performing this validation process is data that has occurred most recently, from 1 to 36 hours prior to the alarm. What has happened historically is valuable from a long-term engineering or integrity management perspective but is not focused upon by an operator in rapidly analyzing, monitoring and responding to an abnormal condition or emergency situation.

Violation 11: Incidents of Operating Line 132 in excess of 390 Maximum Allowable Operating Pressure

CARE has the same objection to Violation 6 as stated above. The CPUC staff visited PG&E's premises whenever they chose and had opportunities to review the operations and records during those visits. Additionally, the CPUC scheduled general rate cases requiring PG&E to provide an explanation of their planned operations and maintenance expenses. Any capital improvements also required an application, discovery and meetings with PG&E staff to understand the written materials. CPUC staff didn't find anything wrong with PG&E's

operations at any time. Therefore, PG&E should not be fined for violating rules or orders at this time.

Violation 12: Preservation of Records Related to Brentwood Video Camera Six

Violation 13: PG&E Data Responses Regarding Brentwood Camera Six Video

Violation 14: PG&E Data Responses Regarding Personnel at Milpitas Terminal on September 9, 2010

CARE agrees that PG&E should be fined for Violations 12 – 14. They are violations of the CPUC’s current regulatory regime and subvert the CPUC’s ability to regulate. PG&E had installed and operated the video recorders of their operations and had an obligation to follow the CPUC’s executive director directive to preserve all the records. PG&E’s explanations that it had a malfunction and that the recording equipment was installed improperly was PG&E’s fault if it was not inspected before it was accepted. PG&E was given funding for video recording equipment purchase and operations with the understanding that it would purchase adequate equipment and operate it. The CPUC does not inspect all such purchases even though it allows PG&E to be reimbursed for their capital cost and expenses. Therefore, the clear lack of doing so requires PG&E to be fined at least as much as the ratepayers provided for funding the purchase and operations of the video equipment.

B. Alleged General Records Violations for all Transmission Lines including Line132

Section V. of this brief, Violations 16 – 27, haven’t been developed properly because they do not explain what they would have cost the rate payers to implement and do not analyze the likely impact on the PG&E gas operations. The testimony could have stated the ongoing records management practices that PG&E used and then explained what the CPSD witness believes that the practices should have been. Then, the CPSD testimony should have explained how the viability of the PG&E gas system operation would be affected, how the CPSD recommended gas system record management system would have been used for identifying faulty pipe segments, and how the records would be used during an emergency. However, CARE could find nothing of these important considerations.

The following is the step-by-step recordkeeping process for transmission maintenance tasks, including measures to confirm the accuracy of the records that PG&E has followed throughout the period that it has operated its gas transmission network:

- 1) A qualified journeyman²⁵ completes the maintenance or repair according to his/her training and skills and according to the current PG&E policies and standards.
- 2) The qualified journeyman completes the maintenance record or repair record specific for the type of work completed. This record is expected to be completed by the expert the day that the task is done. The journeyman signs and dates the maintenance or repair record, attesting that the work is done according to all applicable standards.
- 3) The journeyman's supervisor reviews the record to ensure that it is completely and properly filled out. Any discrepancies are discussed with the journeyman and the work is verified, or re-done if it cannot be verified. Once the supervisor has established that the record is accurate, the supervisor signs and dates the record, attesting to its accuracy.
- 4) The record is filed in the local district office.
- 5) All records are and have been subject to a quarterly review. This review is currently carried out by an Operations Specialist. This review is designed to detect any procedural problems or documentation errors.
- 6) The supervisor periodically field-checks the various maintenance and repair activities in the field to ensure that the journeyman is following all applicable procedures. Any deficiencies are handled on a case-by-case basis with mentoring or re-training, including disciplinary action, if needed.

These maintenance records are also periodically audited by the CPUC. Since the mid-1990s, PG&E has implemented several electronic-based work management processes such as Pipe Line Maintenance (PLM), Gas Facility Maintenance (GasFM), and SAP Work Management. As scheduling and work completion data is stored in these systems, PG&E may use electronic data to verify the accuracy of paper records and resolve any discrepancies or

²⁵ A qualified journeyman must pass all of the tests and on-the-job training to become a journeyman skilled in the activities that he/she performs. The time required to attain journeyman status is generally 18 months to 2 years. In addition, for tasks which fall under the DOT classification as Operator Qualified tasks, the employee must also exhibit his/her proficiency to conduct those tasks with a subject matter. This Operator Qualification must be re-established on a regular frequency (normally every 5-7 years).

missing maintenance data found in paper records. For some maintenance tasks, such as those relating to corrosion, the electronic database constitutes PG&E's document of record.

CARE does not recommend a penalty be imposed for Violations 16 – 27 because there is no analysis indicating that the violations are violations of records management practices that would not have cost the ratepayers any more than those used by PG&E. There is also no analysis of how the CPSD proposed record management practices would have affected PG&E's gas system operations. If the CPUC determines that these violations should be the basis of penalties imposed on PG&E, there should be additional hearings scheduled to determine their cost, viability, and workability.

Violation 16: Job Files

Violation 17: Pipeline History Records

Violation 18: Design and Pressure Test Records

Violation 19: Weld Maps and Weld Inspection Records

Violation 20: Operating Pressure Records

Violation 21: Pre-1970 Leak Records

Violation 22: Leak Records from 1970 Forward

Violation 23: Records to Track Salvaged and Reused Pipe

Violation 24: Data in Pipeline Survey Sheets and the Geographic Information System

Violation 25: Data Used in Integrity Management Risk Model

Violation 26: Missing Report for 1988 Weld Failure

Violation 27: Missing Report for 1963 Weld Failure

VI. Alleged Violations Predicated on the Reports and Testimony of Dr. Paul Duller and Alison North

A. Alleged General Records Management Violations

CARE believes that there were no general records violations of maintenance because these maintenance records are periodically audited by the CPUC. For example, CPSD witness

Duller states²⁶ that records are to be maintained and readily accessible without any analysis of how these records are to be used or how much it would cost the ratepayers to do so. During an emergency such as the San Bruno event, the gas dispatch personnel would try to find the location of the fire and try to stop the gas flow. There is no indication that having complete records in the control room would be useful, or helpful. There is no indication of how much it would cost and there is no explanation of why the CPUC did not require this method of record-keeping.

CARE recommends that these undeveloped violations be the subject of a new proceeding directing the parties to address the viability of the PG&E gas system with these recommended record-keeping methods if the violations of the recommended record-keeping methods are to be the reason for penalizing PG&E for its records management actions.

The Duller-North testimony, Exhibit CPSD-2, presents a records management recommendation in Chapter 3, beginning on p. 3-14. However, there is no attempt to explain how the “assessment criteria” would have been used by the CPUC in the 1950s if the CPUC had been aware of them. CARE asked for clarification during the evidentiary hearings and was told that the authors of Ex. CPSD-2 did not consider the costs of their recommendations²⁷.

Violation A.1: Gas Transmission Division Records Management Practices

B. Alleged Records Retention Violations

Violation B.1: Leak Survey Maps

Violation B.2: Line Patrol Reports

Violation B.3: Line Inspection Reports

Violation B.4: Pressure Test Records

Violation B.5: Transmission Line Inspections

Violation B.6: Failures to Comply with Specific Record Retention Requirements

C. Other Alleged Safety/Pipeline Integrity Violations

²⁶ RT, September 10, 2012, p. 630, line 26 through p. 631, line 20.

²⁷ See footnote 6, *supra*

Violation C.1: Wrong Year Used as Upper Limit in Gas Pipeline Replacement Program

Violation C.2: Impact of Inferior Records on Predicting Earthquake Damage

Violation C.3: Leak Records

VII. Other Allegations Raised by CCSF Testimony

CARE has similar objections to the CCSF witness Gawronski's testimony. The CCSF witness made statements of violations of business and operations records that are not evaluated according to traditional CPUC ratemaking criteria and so may or may not be applicable to PG&E's gas system operations. The CPUC has always, according to all of CARE's findings, evaluated proposals to modify PG&E's operations by first determining the effect on the workability of PG&E's system and also the cost to the ratepayers. The CPUC today should not fine PG&E without knowing how PG&E's operations would have performed if the recommendations had been adopted in the 1950s.

CCSF's witness Gawronski appears to be a qualified witness concerning gas transmission system record keeping issues as they relate to gas transmission operating companies. However, the testimony²⁸ did not explore how PG&E would have created and stored the records. The use

²⁸ Excerpt from CCSF witness Gawronski's testimony: "Q.1 Please state your name and business address.

A.1 My name is John Gawronski. I am a consultant affiliated with the Hudson River Energy Group. My business address is 2079 County Route 47, Salem NY 12865.

...

"Q.19 Do you have any conclusions?

A.19 Yes.

The facts identified above do not support a finding that PG&E's record keeping practices adhered to sound engineer principles. Specifically:

- Because PG&E lacked adequate records it was required to over-rely on the grandfathering provision (and specifically affidavits of historical operating pressures) to substantiate the MAOP for its pipelines;
- PG&E had conflicting records to establish the MAOP for Line 132;
- PG&E's record keeping practices failed to prevent old pipe from being re-used, and failed to track old pipe that was re-used;
- PG&E's record keeping practices appear to have prevented it from adequately considering weld defect documents evidencing unstable manufacturing and construction defects; and
- PG&E's management of change procedures did not properly track revisions of key integrity management documents.

...

"Q.20 Do you have any minimum recommendations for PG&E's record keeping systems?

A.20 Yes.

- PG&E's record keeping system should act as a central repository server housing all technical documents. To ensure accountability, gatekeepers for each type of document should be identified;
- PG&E should identify the types of associated programs needed to access those documents;

of warehoused records also isn't explained. Again, there is no explanation of the ratepayers' cost obligations as compared to the benefits received if these recommendations had been adopted as CPUC regulations.

PG&E didn't use warehoused records during emergency operations because there was no means to retrieve and evaluate the correct records during an emergency. The records were not missed during the CPUC's evaluation of PG&E's requested additions and improvements of its gas transmission system, so the CPUC, the governmental agency charged with overseeing PG&E's gas transmission system, also did not find a means of using these kinds of records. Perhaps, the CPUC staff did not have the relevant expertise to oversee the project and perhaps the CPUC staff did not have the funds or knowledge to hire an engineering consulting firm to do the work? We do not know the answers to these questions and so the CPUC should not now penalize PG&E for something that the CPUC supervised, reviewed and approved in the past.

VIII. Other Allegations Raised by TURN Testimony

CARE could not identify any allegations of violations in TURN's testimony.

-
- To assist in the analysis and integration of the data, PG&E's GIS system should be capable of providing maps, on a segment by segment basis, that provide a visual layering (beneath the plan view of the pipeline) of key IMP attributes;
 - To further assist in the analysis and integration of key attributes, the GIS system should have links to key documents in the central repository. This will assist individuals in accomplishing their assigned duties and responsibilities;
 - The systems provide for access by program engineers and technicians to pull up historical documents related to materials, welding, cathodic protection, leak history, any field inspection reports or metallurgical analyses reports, ILI results, and historical pressure testing and DA inspections performed;
 - The system should identify the individuals responsible for accomplishing and documenting key analyses required by PG&E's procedures;
 - When issues requiring follow-up, sign off or approvals are identified, the system should be capable of allowing ready identification of the status of any of the procedures or IMP process steps;
 - The system should identify when key responses to process steps are pending, and should have the capability of receiving updated interim and final reports and analyses to keep the systems current and filed within the central repository;
 - A documented management of change process should be included in the platform and central repository to ensure any change to key pipeline attributes and process
 - steps are managed and so all key individuals are advised of changes and included in the process.”

IX. Other Allegations Raised by City of San Bruno Testimony

CARE has similar objections to the San Bruno witness' testimony: Mayor Jim Ruane of San Bruno Prepared Testimony of April 30, 2012: "It is the position of the City of San Bruno that all the NTSB recommendations be adopted by the parties to whom they were addressed."²⁹

The City believes that deficiencies in PG&E's recordkeeping and documentation practices resulted in the company failing to adequately identify and address potential risks in its transmission system that could, and *should have* been addressed prior to the rupture. PG&E disclosed that it identified a leak on Line 132 some 9 miles south of San Bruno in 1988. A portion of the pipeline was replaced to repair the leak. Federal law took effect in December 2004 (CFR 192.907) requiring pipeline operators to establish and maintain an integrity management program to address known risks on each transmission pipeline segment in an HCA. Records of this 1988 event should have been taken into account when PG&E enacted their integrity management program pursuant to the 2004 regulations.

Had this known risk to Line 132 been properly addressed in PG&E's integrity management program, a hydrostatic test of Line 132 likely would have been required. Given the construction deficiencies on the pipeline, it is likely that Line 132 would have failed this test. Inaccurate and incomplete records on pipe used to fabricate PG&E Line 132 raise concerns about unknown risks that may affect the safety of this pipeline and other pipelines constructed during or near the same time period.

Post construction inspection and testing programs were not adequate to identify the deficiencies before the pipeline ruptured. This was due in part to the absence of verifiable as-built records. These deficiencies were not identified and corrected during the pipeline construction process and post construction inspection and testing programs were not adequate to identify the deficiencies before the pipeline ruptured in part due to the absence of verifiable as-built records. We believe that inaccurate historical inventory and as-built records for materials used to fabricate the pipeline has resulted in unrecognized increased risk for material failure and raises concern about all pipelines constructed by PG&E during this time period."

²⁹ <http://www.nts.gov/doclib/reports/2011/PAR1101.pdf>

X. Conclusion

CARE recommends that only the violations of a current nature be considered if there is to be no further evidence introduced of the CPUC regulatory climate at the time of the alleged violations because it is too difficult to determine what the CPUC might have done if presented with arguments about required record keeping methods in the 1950s when the pipe that is now PG&E gas transmission line 132 was installed.

The CPUC staff reviewed PG&E's gas system and its operations and maintenance costs during numerous proceedings since 1955 yet there were no reports or criticisms of the records management system or the integrity controls that PG&E used. CARE believes that this lack of enforcement activity at the time that the pipeline was constructed and began operating indicates that PG&E's operations complied with the industry standards for gas pipeline operations then in existence. While the CPUC has the authority to penalize PG&E for activities that the CPUC already approved, it is not a useful endeavor. The purpose of this enforcement action should be to prevent another event resulting in the injury and loss of life.

CARE believes that the violations that occurred in the current regulatory climate are addressed in the common outline for the opening brief in Section V., Violations 12 – 14. The other violations, haven't been developed properly because they do not explain what they would have cost the rate payers to implement and do not analyze the likely impact on the PG&E gas operations. CARE recommends that these undeveloped violations be the subject of a new proceeding directing the parties to address the viability of the PG&E gas system if the violations are to be the reason for penalizing PG&E for its records management actions.

The allegations by the City and County of San Francisco (CCSF) in Section VII and The City of (San Bruno) in Section IX have a similar problem and should be included in a cost and feasibility proceeding if they are to be used to determine penalties for PG&E's actions. San Bruno's and CCSF's allegations refer to failures of both current practices as well as failures from the 1950s. The CPUC could find that PG&E should be penalized for improperly operating its gas transmission system operations as described by San Bruno's witness because these violations were of the NTSB rules and regulations and PG&E has and had a legal obligation of compliance.

The allegations of Utility Reform Network (TURN) in Section VIII will be considered in CARE's reply brief because CARE could not identify any clear violations alleged in TURN's testimony or other filings.

Appendix A – Proposed Findings of Fact

1. A penalty paid to the State’s treasury would not guarantee safe operations of PG&E’s gas transmission system.
2. The CPUC’s preferred remedy for PG&E’s violations in this proceeding should be to prevent future gas pipeline accidents in high consequence areas by assessing a penalty on PG&E equal to the cost of replacing all similar pipelines in the PG&E natural gas service area. PG&E should be given an incentive to reduce the penalty by hiring Californians to produce and install the new pipelines as well as remove and dispose of the old ones. This will be a very expensive endeavor, but it is the only way to be assured that all the natural gas pipelines in PG&E’s service territory are safe. The alternative is to continue operating the PG&E natural gas system as it has been operated using a modern records management system.
3. The violations listed by the charging parties should be considered in the context of the regulatory climate at the time of the violations. The CPUC should always consider the cost of programs as a factor before issuing an order.
4. The CPUC depended on staff reviews of record management practices during general rate cases to ensure PG&E’s use of approved engineering and records management practices, but not industry standards such as the ASME standards because staff recommendations have to be considered in the context of cost to the ratepayers as well as the effect of implementing staff recommendations on the PG&E gas system’s operability.
5. Before PG&E’s record keeping during construction, and maintenance during operations are deemed to be deficient, the CPUC should ask for a showing of how much the alternate record keeping practices recommended would have cost compared to those used and an analysis of how PG&E gas transmission operations would have differed.

Appendix B – Proposed Conclusions of Law

1. PG&E has violated PU Code section 451 as described in Violations 12, 13, and 14 because it disobeyed a direct order of the CPUC’s Executive Director.

2. The NTSB reports described in both Exhibit CPSD-2 in Chapter 5 as well as the San Bruno testimony describe PG&E's failures to perform proper maintenance and operations procedures and blame the CPUC (as well as the U.S. Department of Transportation) lack of oversight so PG&E has not violated PU Code section 451.
3. If the Commission had been presented the alternate record keeping practices that are implicit in the alleged violations recommendations made in this proceeding, at the time of that the violations occurred (those record keeping violations made in the opening brief sections V., VI., VII., VIII. and IX), the Commission would have considered the cost of those recommendations and asked for reports and evidence of the effect that the new record keeping practices would have on the way that gas transmission system operated in California. The charging parties' omission of considering the cost and the impact on PG&E's natural gas transmission system operations of the their violations recommendations means that the CPUC should start a new proceeding to determine how the PG&E's natural gas transmission system would likely have operated and the consequent cost implications of those recommendations before determining whether PG&E should be fined.
4. The CPUC's staff reviewed PG&E's gas system and its operations and maintenance costs during numerous proceedings since 1955 yet there were no reports or criticisms of the records management system or the integrity controls that PG&E used. This lack of enforcement activity at the time that the pipeline was constructed and began operating indicates that PG&E's operations complied with the industry standards for gas pipeline operations then in existence. While the CPUC has the authority to penalize PG&E for activities that the CPUC already approved, it is not a useful endeavor. The purpose of this enforcement action should be to prevent another event resulting in the injury and loss of life.

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