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 with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.	I.11-02-016 (Filed February 24, 2011)

REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 4

III. LEGAL ISSUES OF GENERAL APPLICABILITY 4

A. PG&E'S DUE PROCESS ARGUMENTS HAVE NO MERIT -- § 451 REQUIRES UTILITIES TO PROVIDE SAFE SERVICE AND IT IS ENFORCEABLE AS A STAND-ALONE REQUIREMENT 4

B. CPSD PROPERLY ALLEGES "CONTINUING" OFFENSES PURSUANT TO §§ 2107 AND 2108 12

IV. OTHER ISSUES OF GENERAL APPLICABILITY 17

A. CPSD HAS PROVEN RECORDS VIOLATIONS 17

B. TRACEABLE, VERIFIABLE AND COMPLETE IS NOT A NEW RECORD KEEPING STANDARD – IT IS A CLARIFICATION OF THE EXISTING STANDARD THAT RECORDS MUST BE COMPLETE, ACCURATE AND ACCESSIBLE 20

1. PG&E's Record Keeping Failures Prompted the NTSB To Emphasize That Records Must Be "Traceable, Verifiable, and Complete" 21

V. ALLEGED VIOLATIONS PREDICATED ON THE REPORTS AND TESTIMONY OF MARGARET FELTS 23

A. ALLEGED RECORDS VIOLATIONS RELATING TO LINE 132, SEGMENT 180, SAN BRUNO INCIDENT 23

B. ALLEGED GENERAL RECORDS VIOLATIONS FOR ALL TRANSMISSION LINES INCLUDING LINE132 23

1. PG&E Did Not Ensure The Accuracy Of The Data When It Populated Its GIS And It Took No Systematic Actions To Correct Errors And Omissions Over Time 23

VI. ALLEGED VIOLATIONS PREDICATED ON THE REPORTS AND TESTIMONY OF DR. PAUL DULLER AND ALISON NORTH 28

VII. ALLEGATIONS RAISED BY CCSF TESTIMONY 28

VIII. ALLEGATIONS RAISED BY TURN TESTIMONY 28

IX. ALLEGATIONS RAISED BY CITY OF SAN BRUNO TESTIMONY 28

X. CONCLUSION 28

SB_GT&S_0646401

TABLE OF AUTHORITIES

Page

CASE

Carey v. Pacific Gas & Elec., D.99-04-029, 85 CPUC2d 682 (1999) .....*passim*

County of San Diego v. Cal. Water, 30 Cal. 2d 817, 826 (1947) 18

F.C.C. v. Fox Television, 132 S.Ct. 2307, 2317 (2012) 9, 11

Feduniak v. Cal. Coastal Comm'n, 148 Cal. App. 4th 1346, 1381 (2007) 16, 18

Golden Gate Water Ski Club v. Contra Costa,
165 Cal. App. 4th 249, 263 (2008) 16, 18

Kajima/Ray Wilson v. LA County Metro. Trans. Auth.,
23 C. 4th 305, 316 (2000) 16, 18

Martin v. Occupational Safety & Health Rev. Comm'n,
499 U.S. 144, 158 (1991) 11, 12

Pacific Bell Wireless, LLC v. Public Utilities Commission,
140 Cal. Ap. 4th 718, 741-742 (2006) 5, 8, 14

Palos Verdes Faculty Assn. v. *Palos Verdes Peninsula Unified*
Sch. Dist., 21 Cal.3d 650, 658 (1978) 6

People v. *Belleci*, 24 Cal.3d 879, 884 (1979) 4

San Francisco v. Ballard, 136 Cal. App. 4th 381, 395 (2006) 18

Solberg v. *Superior Court* (1977) 19 Cal.3d 182, 198) 6

Strawberry Prop. Owners Ass'n v. Conlin-Strawberry Water Co.,
Inc., D.97-10-032, 1997 Cal. PUC LEXIS 954, *9 16

West Covina Hospital v. Superior Court, 41 Cal.3d 846, 850 (1986)..... 6

SB_GT&S_0646402

CPUC DECISIONS

Page

D.94-12-001 ..... 5, 10
D.98-12-075 ..... 14, 15, 16
D.98-12-076 ..... 7, 8, 14
D.02-10-059 14
D.04-09-062 ..... 9, 14
D.04-12-058 9
D.08-09-038 14
D.11-06-017 ..... 15, 22, 23
D.12-12-030 ..... *passim*
D.12-02-032 20

CALIFORNIA PUBLIC UTILITIES CODE

§ 451 ..... *passim*
§ 463 ..... 4, 29
§ 702 9
§ 2104.5 15
§ 2107 ..... 13, 14
§ 2108 ..... 13, 14, 15, 16
§ 2896 9

OTHER AUTHORITIES

ASME B31.8 20

SB_GT&S_0646403

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"At the NTSB investigative hearing, PG&E officials testified that if discrepancies between GIS data and actual conditions are discovered by field personnel, field engineers are required to report them to the mapping department, which validates the information. However, the documents provided to the NTSB indicate that PG&E does not use the ECDA process for validating assumed values, determining unknown values, or correcting erroneous values."

NTSB Report, p. 109

"... [I]n many cases, accurate information could have easily been obtained during ECDA digs, but the information was either not obtained or not entered. The lack of complete and accurate pipeline information in the GIS prevented PG&E's integrity management program from being effective."

NTSB Report, p. 110

"The fact the line pipe DSAW seam type was incorrectly recorded as 'seamless' is symptomatic of PG&E's inadequate quality control and quality assurance management. The failure to properly document the seam type designation as DSAW, rather than seamless is not sufficient in itself to have prevented this incident, but had the records been more complete and the characterization been part of a more refined threat identification process, then the tragedy might have been avoided. Without a quality assurance program embedded in the integrity management process– and a feedback loop when anomalies are uncovered or pipelines do fail, mistakes happen. Unheeded lapses in the end-to-end process of pipeline integrity can lead to accidents like San Bruno."

IRP Report, p. 72

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I. INTRODUCTION

In the first lines of its Opening Brief Pacific Gas and Electric Company (PG&E) expresses its "regret" for the San Bruno explosion, claims it is "morally and legally responsible for this tragic accident, and that it has "learned many lessons."[1]

However, the rest of PG&E's Opening Brief is *not* the brief of a company that has learned *anything* from the San Bruno disaster, from the investigations into its causes, or from this investigation into its gas pipeline recordkeeping practices. It is not the brief of a company that has decided to accept responsibility for its actions. The brief reveals the same utility responsible for the San Bruno explosion – a mismanaged utility accustomed to *evading* responsibility for its actions.

The baseless legal arguments proffered in PG&E's Opening Brief belie its perfunctory assertions of "regret" and "responsibility." Contrary to well-established legal principles and uncontroverted facts, PG&E asserts that:

- Public Utilities Code Section 451,[2] the law that in various versions has required it to operate its system safely since 1909, is not a safety statute, notwithstanding its plain language regarding safety and decades of Commission decisions applying it as a safety statute;

- The Commission may not assess penalties to PG&E on a daily basis, notwithstanding clear statutory language requiring daily assessments and decades of Commission decisions that have done so; and

- PG&E's constitutional due process rights have been violated because it had no notice that it could be fined for gas safety violations pursuant to § 451, notwithstanding the fact that at least

[1] PG&E Opening Brief (OB), p. 1 ("PG&E deeply regrets the loss of life and injuries and the effect on the San Bruno community caused by the September 9, 2010 rupture and explosion on Line 132. PG&E is morally and legally responsible for this tragic accident and has acknowledged liability to those injured. As a result of the accident, PG&E – along with the industry as a whole – has learned many lessons, and the company has committed to making real and lasting changes to enhance the safety of its gas system.")

[2] Unless otherwise stated, all further sections references are to the California Public Utilities Code.

SB_GT&S_0646405

> three Commission decisions have sought fines for safety violations pursuant to § 451, and two of those decisions involved PG&E.

In sum, PG&E accepts *no* responsibility for the abysmal state of its gas pipeline records, which provided the information it relied upon to determine when to repair or replace its gas pipelines. Instead, PG&E argues that while its "records practices have fallen short of expectations," they are no different than the records practices of the rest of the natural gas industry "and do not represent violations of law or regulations applicable at the time."[3]

The Commission should not be distracted by PG&E's excuses and rhetoric. Instead it should focus on the evidence in this case. PG&E's records practices have not just "fallen short of expectations." They have fallen short of what is necessary to safely operate a gas pipeline system. The Commission should hold PG&E accountable for the recordkeeping violations asserted and proven by the Consumer Protection and Safety Division (CPSD).[4]

PG&E continues to argue that the Commission can only sanction it for violation of specific safety rules and regulations, but not for violating the fundamental general requirement that it operate its gas transmission system in a manner that ensures public safety, a requirement set forth in Public Utilities Code § 451. The Commission has already (and properly) properly rejected this argument. The Commission *can* sanction a utility for failing to provide service in a safe manner as required by § 451, and has done so. As explained in Decision (D.) 12-12-030, the Commission's decision on PG&E's proposed "pipeline safety enhancement plan" or "PSEP":

> We require our natural gas transmission system operators to exercise initiative and responsible safety engineering in *all* aspects of pipeline

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[3] PG&E OB, p. 3.

[4] The Consumer Protection and Safety Division was renamed the Safety and Enforcement Division (SED) effective January 1, 2012. However, for clarity and consistency, we refer to SED as CPSD throughout this pleading.

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> management. Simply because a regulation would not prohibit particular conduct does not excuse a natural gas system operator from recognizing that such conduct is not appropriate or safe under certain circumstances.[5]

Evidently, PG&E still has not heard this important message. PG&E will not change course if the Commission continues to allow it to profit from its decades of mismanagement. The Commission took steps in the right direction in D.12-12-030 by limiting ratepayer responsibility for the first phase of PG&E's PSEP, and by making the allowed rate increases subject to refund based on the findings in the related investigations, including this proceeding. Based on the evidence presented in this proceeding, the Commission should find that PG&E's recordkeeping deficiencies constitute unreasonable errors and omissions requiring ratemaking disallowances pursuant to Public Utilities Code §§ 451 and 463 for all direct and indirect costs incurred to correct those errors and omissions.[6]

In addition to holding PG&E responsible for the significant financial consequences of its proven failures, the Commission must devise more effective means of overseeing PG&E's operations. To this end, it should adopt a process to appoint a qualified, independent monitor to oversee PG&E's gas pipeline testing, replacement, and recordkeeping activities to ensure they are performed in an appropriate manner.[7] This monitoring should continue until PG&E has demonstrated that it has successfully accomplished the highest priority remedial work that is needed and has developed a functional system for managing its pipeline records. DRA will address this

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[5] D.12-12-030, p. 95. *See also, id.,* p. 60 ("We do not agree that the change from an industry practice to regulatory mandate somehow excuses PG&E's failure to retain the pressure test records. As noted above, the record supports the finding that PG&E stated that from 1956 on, PG&E's practice was to pressure … test pipeline prior to placing it in service and that the costs of such testing was passed on to ratepayers. *As required by industry practice and prudent natural gas transmission system operations, PG&E should have created and maintained records of those pressure tests.*" *Emphases added.*)

[6] DRA OB, pp. 18-21. To the extent that the Commission finds that particular conduct does not constitute a violation, the Commission should consider, for ratemaking purposes, whether the conduct was prudent. To this end, DRA joints the argument set forth in The Utility Reform Network's Opening Brief at pp. 7-9.

[7] DRA OB, pp. 21-25.

SB_GT&S_0646407

recommendation more fully in its opening brief on remedies for all three of the San Bruno-related investigations.

Appendices A and B, attached to DRA's Opening Brief in this proceeding, contain proposed Findings of Fact and Conclusions of Law necessary to implement these recommendations.

II. BACKGROUND

III. LEGAL ISSUES OF GENERAL APPLICABILITY

A. PG&E's Due Process Arguments Have No Merit -- § 451 Requires Utilities To Provide Safe Service And It Is Enforceable As A Stand-Alone Requirement

PG&E's misrepresentations of law reach their zenith (or perhaps their nadir) when it argues that § 451 "is a ratemaking provision"[8] and that CPSD's reliance on § 451 as a "free-floating safety law runs afoul of the due process clause of the California Constitution."[9] Notwithstanding Commission decisions using § 451 as a "free floating" safety statute when regulations or laws fail to address specific unsafe practices by the utilities,[10] and an appellate court decision upholding the Commission's application of the statute,[11] PG&E complains that § 451 does not provide it "fair notice of the conduct that CPSD now claims violates the law," and that it is "too vague to provide a lawful

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[8] PG&E OB, p. 24.

[9] PG&E OB, p. 11.

[10] *See, e.g., Carey v. Pacific Gas & Elec.,* D.99-04-029, 85 CPUC2d 682 (1999) (*Carey Rehearing Order*); Order Instituting Investigation, Notice Of Opportunity For Hearing, And Order To Show Cause Why The Commission Should Not Impose Appropriate Fines And Sanctions, I.05-03-011, p. 10 ("Section 451 requires a public utility to maintain its equipment and facilities in a safe and reliable manner. We hereby place PG&E on notice and provide an opportunity for PG&E to be heard on the issue of whether it violated section 451, and whether penalties should be imposed."); Investigation on the Commission's own motion into the causes of recent derailments of Southern Pacific Transportation Company trains, D.94-12-001 (*replacing* 94-11-069), Conclusion of Law 17 ("By failing to obtain an MSDS for metam sodium or otherwise disclose its hazardous properties to the ERAs for a period in excess of three hours after the accident; by failing for over one hour to disclose to the ERAs the release of metam sodium into the Sacramento River; and by failing to assist the ERAs in promptly developing mitigating measures for the release of metam sodium into the Sacramento River, SP violated PU Code § 451.").

[11] *Pacific Bell Wireless, LLC v. Public Utilities Commission,* 140 Cal. App. 4th 718, 741-742 (2006) (*Cingular Appeal*).

SB_GT&S_0646408

foundation for civil penalties."[12] PG&E is wrong on all of these points and it fundamentally misconstrues the multiple decisions that it marshals in an attempt to support its baseless arguments.

PG&E wastes multiple pages of its Opening Briefing purporting to apply rules of statutory construction to support its argument that § 451 is a ratemaking provision and cannot be used as a safety provision.[13] As an initial matter, PG&E overlooks the legal principle that rules of statutory construction are not applied unless the plain language of the statute is not clear.[14] Here, the language of the statute is clear that "[e]very public utility shall furnish and maintain" their "facilities … to promote the safety, health, comfort, and convenience of … the public."

The safety requirement is clear. No statutory construction is necessary, and the analysis should end there. But PG&E persists with its analysis to the point that it *actually claims* that the Commission's reading of § 451 as a safety statute imposing a "best engineering practices" standard "would impermissibly render superfluous entire provisions of the Code and every Commission regulation that requires any safety measure of any kind."[15] This is evidently an outcome that the court in the *Cingular Appeal* overlooked when it upheld the Commission's application of § 451 in both the *Carey* and *Cingular* decisions. It is also ironic in light of PG&E's insistence that § 451 is a ratemaking provision, that the court in the *Cingular Appeal* rejected Cingular's argument that the Commission was preempted because its actions in that case were ratemaking:

> Cingular first argues the Commission's decisions are preempted by federal law. We disagree. While the Commission is preempted from

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[12] PG&E OB, p. 11.

[13] PG&E OB, pp. 24-29.

[14] *West Covina Hospital v. Superior Court,* 41 Cal.3d 846, 850 (1986) *("*We give effect to statutes according to the usual, ordinary import of the language employed in framing them. When statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it." *Citing to People* v. *Belleci* (1979) 24 Cal.3d 879, 884; *Palos Verdes Faculty Assn.* v. *Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 658; *Solberg* v. *Superior Court* (1977) 19 Cal.3d 182, 198.)

[15] PG&E OB, p. 27.

SB_GT&S_0646409

> regulating either rates or the entry of a wireless provider into the market, it is not preempted from regulating other terms and conditions of wireless telephone service. We conclude the imposition of fines and the requirement that Cingular refund early termination fees paid by its customers *were neither regulation of rates nor regulation of market entry.*[16]

Thus, PG&E's attempt to write the safety provisions out of § 451, and to limit it to ratemaking functions using inapplicable rules of statutory construction, has already been rejected by the California Court of Appeals. Rather, the words "to promote the safety, health, comfort, and convenience of … the public" mean that the quality of service must be reasonable, as well as the rates, and quality of service includes safety.

Faced with Commission and court decisions contrary to its other arguments – such as its claim that it did not have notice that § 451 could be applied as a stand-alone safety statute – PG&E claims those cases do not apply. For example, while PG&E's rhetoric is often difficult to follow, it appears to argue that the Commission's *Carey* decision – which imposed fines on PG&E for each day of unsafe gas operations under § 451 – was not a safety case, but was about "reasonable service" and that the decision therefore "casts doubt on CPSD's 'best engineering practices' standard."[17] On this basis, PG&E argues CPSD's reliance on *Carey* "hurts rather than helps the CPSD."[18]

These arguments do not help PG&E's case. The Commission issued the original *Carey* decision in 1998 in response to a complaint that PG&E *had continued for three years* the unsafe practices that contributed to a 1994 gas explosion in a multi-unit apartment building.[19] The Commission applied § 451 in that proceeding to fine PG&E $800 per day for 1,221 days (for a total of $976,800) for continuing to delegate to others gas shut-off services after the 1994 explosion put PG&E on notice that the practice was

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[16] *Cingular Appeal,* p. 723 (*emphases added*).

[17] PG&E OB, p. 30. *Carey was* discussed in DRA's Opening Brief at pages 8 and 9

[18] PG&E OB, p. 30.

[19] Notably, similar to the facts revealed in both this proceeding and the San Bruno Investigation (I.12-01-007), both the *Carey* decision and the Mission Substation Fires Investigation OII, discussed below, recognize PG&E's failure to change unsafe practices that it was previously on notice about.

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unsafe.[20] The Commission found: "We conclude that Pacific Gas and Electric Company (PG&E) engaged in unsafe practices which violated Public Utilities Code § 451 for a period of 1,221 days by not revising its fumigation termination policy in 1994 after adverse events affecting public safety."[21]

While PG&E attempts to re-frame *Carey* as a "reasonable service" case based on confusing rhetoric and citations to various ratemaking terms used in the decision, it is perfectly clear from the plain language of the Commission's decision that *Carey* was about PG&E's unsafe practices and that it was fined pursuant to § 451 for those unsafe practices.[22] In addition to the first Ordering Paragraph, which emphasizes that PG&E was being fined because of "unsafe practices," the opening sentence of *Carey* reiterates the point: "ORDER finding that a gas and electric utility had engaged in *unsafe operations* for a period of over three years by allowing pest control contractors to turn off gas service during fumigation."[23] But even if *Carey* had not expressly emphasized safety, it is hardly arguable that the obligation to provide "reasonable service" does not encompass the obligation to provide *safe* service.

PG&E similarly attempts to dismiss the *Cingular Appeal* [24] and related Commission decisions, discussed in DRA's Opening Brief at pages 6 to 11, claiming "*Cingular* does not support CPSD's position either" because Cingular had notice that its conduct would violate § 451.[25] PG&E claims that its situation is different from Cingular's: "PG&E had no such notice. The Commission has never applied Section 451 to punish a utility for what CPSD claims to have been generally shoddy gas

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[20] *Carey,* D.98-12-076, 84 CPUC2d 196, 198 (1998).

[21] *Carey,* D.98-12-076, 84 CPUC2d 196, Ordering Paragraph 1 (1998).

[22] *Carey,* D.98-12-076, 84 CPUC2d 196, Ordering Paragraph 1 (1998).

[23] *Carey,* D.98-12-076, 84 CPUC2d 196, 196 (*emphases added*).

[24] *Pacific Bell Wireless, LLC v. Public Utilities Commission,* 140 Cal. App. 4th 718 (2006) (*Cingular Appeal*).

[25] PG&E OB, pp. 32-33.

SB_GT&S_0646411

recordkeeping practices."[26] In other words, PG&E appears to argue that *Carey* – which fined it for unsafe gas operations – gave it no notice, or only put it on notice, that it could be fined for *certain* unsafe gas operations not specifically prohibited by laws or regulations, but not "generally shoddy gas recordkeeping practices." Like its distinction between its obligation to provide "reasonable service" but not necessarily "safe service," PG&E makes a distinction without a difference.

In addition to *Carey* and the various *Cingular* decisions,[27] there are two additional cases that refute PG&E's constitutional due process and notice arguments. In 2005 the Commission opened an investigation against PG&E regarding its Mission substation fires – an investigation that explicitly put PG&E on notice that it could be fined for "generally shoddy" electric operations under § 451.[28] The Order Instituting the Investigation (OII) stated: "Section 451 requires a public utility to maintain its equipment and facilities in a safe and reliable manner. We hereby place PG&E on notice and provide an opportunity for PG&E to be heard on the issue of whether it violated section 451, and whether penalties should be imposed."[29]

While PG&E may claim that the Mission Substation Fires OII is not applicable for notice purposes because it was an investigation involving *electric* operations, the *Cingular Appeal* lays that issue to rest. It recognizes that decisions covering different types of utilities and practices can provide notice, and the notice provided by the Mission Substation Fires OII would easily satisfy the analysis in that Court of Appeals decision.[30]

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[26] PG&E OB, pp. 33.

[27] In addition to the *Cingular Appeal (citation provided above),* there were also the Commission's *Cingular Investigation* and *Cingular Rehearing* decisions, D.04-09-062 and D.04-12-058, respectively.

[28] Order Instituting Investigation, Notice Of Opportunity For Hearing, And Order To Show Cause Why The Commission Should Not Impose Appropriate Fines And Sanctions, I.05-03-011 (*Mission Substation Fires OII*).

[29] *Mission Substation Fires OII*, I.05-03-011, p. 10.

[30] *Cingular Appeal,* p. 742 ("These cases deal with a variety of different acts and omissions by many types of public utilities. From a reading of these cases (as well as many others not cited here) and their rationale, Cingular was on notice that the Commission would determine Cingular's actions here violated sections 451, 702, and 2896.")

SB_GT&S_0646412

To the extent that PG&E suggests that the OII is not relevant because it resulted in a settlement,[31] PG&E misses the point. The OII cited here was *not* the result of a settlement – it was a decision by the Commission and unquestionably put PG&E on notice that it could be fined for general safety violations under § 451. Whether or not the OII resulted in a fine, or something else, is irrelevant.

Further, in 1994, the Commission opened an investigation into the causes of derailments involving Southern Pacific. The Commission applied § 451 as a stand-alone safety statute and found Southern Pacific violated § 451 for "failing to assist" in "promptly developing mitigation measures" for chemicals that the railroad utility dumped into the Sacramento River.[32]

In sum, notwithstanding PG&E arguments to the contrary, the Commission has applied § 451 as a stand-alone safety statute on at least three occasions – *Carey* and the two proceedings described above. And the Commission put PG&E and the other gas utilities on notice when it adopted General Order 112 that they were still liable for their "primary obligation and responsibility … to provide safe service and facilities in their gas operations."[33] As described in DRA's Opening Brief, PG&E has been on notice for several decades that its operation and maintenance of its gas transmission system was potentially unsafe.[34] Any reasonable person would know this. And any reasonable person would understand from prior Commission decisions applying § 451 that PG&E could be fined for its unsafe practices pursuant to § 451. PG&E's current claims to the

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[31] *See* PG&E OB, p. 33, n. 150.

[32] Investigation on the Commission's own motion into the causes of recent derailments of Southern Pacific Transportation Company trains, D.94-12-001 (*replacing* 94-11-069), Conclusion of Law 17 ("By failing to obtain an MSDS for metam sodium or otherwise disclose its hazardous properties to the ERAs for a period in excess of three hours after the accident; by failing for over one hour to disclose to the ERAs the release of metam sodium into the Sacramento River; and by failing to assist the ERAs in promptly developing mitigating measures for the release of metam sodium into the Sacramento River, SP violated PU Code § 451.").

[33] D. 61269, p. 12, Finding and Conclusion Number 8.

[34] DRA OB, pp. 25-27.

SB_GT&S_0646413

contrary are nothing short of incredible, especially given that PG&E *was the utility* involved in *two* of the proceedings seeking sanctions pursuant to § 451.

Finally, PG&E's citation to two U.S. Supreme Court decisions to support its lack of notice argument are perplexing.[35] The only relevant proposition PG&E's cases stand for is the uncontroversial proposition that "laws regulating persons or entities must give fair notice of what conduct is required or proscribed."[36] And *FCC v. Fox,* the only one of the two cases cited by PG&E that articulates this rule, explains that the notice standard is whether the statute would provide "a person of ordinary intelligence fair notice of what is prohibited."[37]

The cases are otherwise inapposite in almost every respect. In *FCC v. Fox,* the FCC made its indecency rule more specific *after* the offending Fox program aired, and the court found that Fox had no notice *prior* to the program airing that its actions would be "indecent" because: (1) the FCC could only point to an "isolated and ambiguous statement from a 1960 Commission decision" as providing notice to Fox; and (2) the FCC had previously released decisions sanctioning another broadcaster but declining to find the same type of violation alleged against Fox actionably indecent.[38]

Martin provides more legal support for *CPSD* than PG&E. PG&E evidently cites *Martin* for the proposition that using a citation "as the initial means for announcing a particular interpretation may bear on the adequacy of notice to regulated parties."[39] PG&E attempts to argue that CPSD's use of the terms "best engineering practices" and "good engineering practices" reflect new or different standards not previously applied by the Commission.[40] As explained by CPSD: "PG&E is required to comply with industry

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[35] PG&E OB, pp. 34-37.

[36] *F.C.C. v. Fox Television,* 132 S.Ct. 2307, 2317 (2012) "*FCC v. Fox*"; *see, e.g., Martin v. Occupational Safety & Health Rev. Comm'n,* 499 U.S. 144, 158 (1991), *"Martin"*.

[37] *F.C.C. v. Fox*, 2318.

[38] *F.C.C. v. Fox,* 2319.

[39] *Martin,* 499 U.S. 144, 158 (1991).

[40] *See, e.g.,* PG&E OB, p. 35.

SB_GT&S_0646414

practice, and the term used by CPSD, *e.g.,* 'best engineering practices,' 'good utility safety practices' or 'good utility practices' is a matter of semantics and does not change PG&E's duty."[41] There is no meaningful difference between "best" and "good" engineering practices. And PG&E's point is inapposite because this proceeding is *not* the first time CPSD has "announced" that a utility may be fined under § 451 for safety violations. Thus, it is hard to understand how or why *Martin* is "applicable" or "analogous" here.[42] In fact, the primary holding of *Martin* is that reviewing courts defer to agency interpretations of their laws and regulations. *Martin* explains: "It is well established 'that an agency's construction of its own regulations is entitled to substantial deference. … In situations in which 'the meaning of [regulatory] language is not free from doubt,' the reviewing court should give effect to the agency's interpretation so long as it is 'reasonable,' … that is, so long as the interpretation 'sensibly conforms to the purpose and wording of the regulations'."[43] Thus, *Martin* is primarily applicable here to the extent it mandates deference to the Commission's interpretation of § 451. This is the same principle articulated in the *Cingular Appeal* upholding the Commission's interpretation of § 451 in both its *Cingular Investigation* and *Carey* decisions.[44]

Ultimately, the question is not whether the constitutional rule regarding fair notice applies. Everyone agrees that it does. The question is whether PG&E *had sufficient notice* that the Commission might assess it for failure to maintain a safe gas transmission system pursuant to § 451. As discussed above, and in DRA's Opening Brief, it is clear, given the same type of analysis applied by the Court of Appeals in the *Cingular Appeal,* that PG&E had more than ample notice that it could be fined for § 451 safety violations.[45] Unlike *FCC v. Fox,* and the concern expressed in *Martin* regarding notice initially

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[41] CPSD OB, pp. 12-13.

[42] PG&E OB, pp. 34-35.

[43] *Martin*, 150-151 (*citations omitted*).

[44] *Cingular Appeal,* p. 729

[45] DRA OB, pp. 11-13.

SB_GT&S_0646415

provided by citation, PG&E has been on notice for decades that it could be fined for gas safety violations under § 451 – it was fined for such violations in the 1999 *Carey* decision and it was subject to investigation and the possibility of such fines in the 2005 Mission Substation Fires OII. Thus, the cases cited by PG&E to show lack of notice are wholly inapposite. Yet PG&E insists both cases are "analogous" and "equally applicable" here.[46]

In sum, PG&E's constitutional due process argument is a Swiss cheese with more holes than substance. While PG&E is entitled to a zealous defense, its § 451 due process arguments cross the line, harm the regulatory process, and waste the Commission's and other intervenors' limited resources.

B. CPSD Properly Alleges "Continuing" Offenses Pursuant to §§ 2107 and 2108

PG&E asserts that CPSD may not "assert 'continuing' violations going back decades."[47] PG&E also claims that the Commission may not find a "continuing" violation unless it proves that the utility could have cured the violation, but failed to do so.[48] PG&E further argues that "the equitable doctrine of laches precludes CPSD from raising claims of violations going so far back in time that PG&E cannot reasonably be expected to have the evidence to meet the charges."[49]

PG&E's arguments have no merit.

Contrary to PG&E's implications, CPSD did not randomly decide to assess fines on a daily basis. Public Utilities Code § 2108 expressly provides that each day a violation continues "shall be a separate and distinct offense":

> Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person

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[46] PG&E OB, pp. 34-35.

[47] PG&E OB, p. 11.

[48] PG&E OB, p. 11.

[49] PG&E OB, p. 11.

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> is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

As PG&E is well aware, the Commission has relied upon this statutory provision for decades to assess fines for each day that a utility is in violation of the law.[50]

PG&E made a related argument challenging continuing violations last year when it appealed a fine for failure to perform gas leak surveys. In that appeal, PG&E argued that because the requirement to conduct a leak survey is once every five years, it could only be fined once every five years for missing the next leak survey.[51] The Commission affirmed the ALJ determination that PG&E was wrong: "The duty to conduct a leak survey does not expire for five years once a survey date has passed. … Each missed day is a violation. This view is consistent with state law, which provides that in the case of a continuing violation each day's continuance is a separate and distinct offense."[52]

Here, PG&E claims: "It is not enough to contend, as CPSD apparently does, that the continued absence of a record makes a violation continuing."[53] However, that is

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[50] *See, e.g., Carey,* D.98-12-076, 84 CPUC2d 196, Ordering Paragraph (OP) 1 (1998); D.98-12-075, 1998 Cal. PUC LEXIS 1016, *56 (discussion the policy behind daily fines and affirming that "[f]or a "continuing offense," *Public Utilities Code § 2108* counts each day as a separate offense."); *Cingular Investigation,* D.04-09-062, p. 62 ("Section 2108 provides, in relevant part, that 'in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.' … Both violations constitute continuing offenses during the relevant time periods. Considering the record as a whole, we find that the penalty for each violation should be calculated on a daily basis.") and Conclusion of Law (COL) 4 ("Pursuant to §§ 2107 and 2108 and Commission precedent, for the violations of law for the period January 1, 2000 to April 30, 2002 (849 days), Cingular should pay a penalty of $10,000 per day, or $8,490,000."); *Qwest*, D.02-10-059, p. 43, n. 43 ("Sections 2107 and 2108 address fines. According to § 2107, Qwest is liable for a fine of $500 to $20,000 for every violation of the Public Utilities Code or a Commission decision. Section 2108 provides that every violation is a separate and distinct offense, and in case of a continuing violation each day's continuance constitutes a separate and distinct offense."); and SCE's Performance-Based Ratemaking OII, D.08-09-038, p. 111 ("Finally, a fine of $30 million is reasonable when viewed as an ongoing violation that should be subject to a daily penalty, as recommended by CPSD and used by the Commission in the case that was upheld in Pacific Bell Wireless, LLC v. Pub. Util. Comm'n. If SCE's violations are viewed as daily violations that continued for seven years, then a $30 million dollar fine equates to a daily penalty of just less than $12,000 ($30 million / 7 years / 365 days").

[51] Resolution ALJ-277, p. 3.

[52] Resolution ALJ-277, p. 4, *citing* § 2108.

[53] PG&E OB, p. 40.

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exactly the point. Section 2108 *requires* that the Commission consider fines for every day the record is absent. PG&E suggests that it may only be fined on a daily basis if the violation is "curable" and it claims that its records violations are not curable.[54] PG&E explains: "The Commission may not find a 'continuing' violation in the absence of proof that the utility could have cured the alleged violation, and failed to do so."[55] PG&E argues that absent an "ability to cure," daily fines would lead to "absurd results."[56] PG&E's argument culminates in the conclusion that it is entitled to both "notice and a meaningful opportunity to cure."[57]

PG&E's "notice and cure" argument makes no sense. As an initial matter, the facts belie PG&E's assertion that its records violations are not curable. PG&E has spent over 250,000 person hours since the San Bruno explosion correcting and updating its records databases pursuant to NTSB recommendations and Commission orders.[58] It claims it "has retrieved, scanned and uploaded more than 3.5 million paper documents dating back more than 50 years…"[59] Thus, PG&E's claim that its missing and/or inaccurate records cannot be "cured" contradicts the point of this effort, and the fact that this effort has purportedly resulted in the discovery of missing information.[60]

Second, assessing fines on a daily basis does not lead to absurd results because of other protections built into the statutory framework for assessing fines. While CPSD is obligated to consider daily fines pursuant to § 2108, the Commission may adjust the fines by taking into account a combination the factors listed in § 2104.5 and D.98-12-075,

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[54] PG&E OB, p. 41.

[55] PG&E OB, p. 11.

[56] PG&E OB, p. 41.

[57] PG&E OB, p. 42.

[58] *See, e.g.,* D.11-06-017 and D.12-12-030, pp. 11-12. *See also,* January 31, 2013 letter from PG&E President Christopher P. Johns to Honorable Deborah A.P. Hersman, Chairperson of the National Transportation Safety Board and PG&E Power Point Presentation entitled "PG&E Pipeline Safety Enhancement Plan (PSEP) Expedited Application Workshop", dated March 26, 2013. The Assigned ALJ took official notice of these two documents via e-mail ruling on April 4, 2013.

[59] PG&E OB, p. 1.

[60] *Id.*

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including: the severity of the offense; the conduct of the utility before, during and after the offense to prevent, detect, disclose and rectify a violation; the financial resources of the utility; the totality of the circumstances in furtherance of the public interest; and the role of precedent.[61]

Decision 98-12-075 – a decision often relied upon by the Commission as an accurate articulation of its enforcement authority – discusses the policy behind assessment of daily fines:

> The number of the violations is a factor in determining the severity. A series of temporally distinct violations can suggest an on-going compliance deficiency which the public utility should have addressed after the first instance. Similarly, a widespread violation which affects a large number of consumers is a more severe offense than one which is limited in scope. For a "continuing offense," Public Utilities Code § 2108 counts each day as a separate offense.[62]

Finally, nothing in the statutory framework mentions the requirement that a violation be "curable" or requires the Commission to provide notice and opportunity for cure before imposing daily fines. And this position is inconsistent with multiple Commission decisions that have imposed daily fines without notice and an opportunity to cure.[63]

The cases cited by PG&E in support of this claim do not establish that "the Commission has interpreted Section 2108 as applying only to violations that are curable."[64] If anything, one of the cases stands for the proposition that a utility may incur daily fines for failure to cure *after* notice.[65] In this instance, inability to cure may be

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[61] DRA does not address these issues in detail here, or apply these factors here because these issues will be addressed in detail in the briefs identified for discussion of Fines & Remedies.

[62] D.98-12-075, 1998 Cal. PUC LEXIS 1016, * 56.

[63] *See, e.g.,* footnote 50 above.

[64] PG&E OB, 41.

[65] *See Strawberry Prop. Owners Ass'n v. Conlin-Strawberry Water Co., Inc.*, D.97-10-032, 1997 Cal. PUC LEXIS 954, *9 ("… [E]ach day any violation remains uncured constitutes a separate and distinct offense for the purposes of the penalty provisions of the Public Utilities Code from which any relevant statute of limitations may be measured.").

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taken into consideration in establishing the amount of the fine, but as described above, there is no evidence that the violations are not curable. As PG&E is well aware as a result of its records validation efforts, where it has irretrievably lost documents, it has available to it opportunities to "cure" by recreating the relevant information contained within them by, for example, performing an assessment of the line.

Finally, PG&E argues that it is prejudiced by CPSD's "unreasonable delay" in identifying and citing it for its records deficiencies such that the equitable doctrine of laches bars CPSD from asserting the violations now.[66] PG&E makes much of the fact that the Commission did not identify its records problems in previous audits and that it failed to perform specific audits for compliance with § 451.[67] The Commission is clearly at fault with regard to its lax oversight of PG&E's recordkeeping practices.[68] However, CPSD's inattention does not absolve PG&E of its continuing obligation to maintain complete and accurate records to ensure the safety of its gas pipeline system pursuant to § 451, nor does it protect PG&E from prosecution for its recordkeeping violations. As explained in DRA's Opening Brief, PG&E was on notice since at least the early 1980s that there were significant problems with the accuracy of the databases it relied upon to determine the schedule for maintenance and replacement of its gas pipeline system.[69] The Commission's failure to recognize this fact after superficial audits that focused primarily on PG&E's written procedures, rather than the data and actual practices behind them, does not absolve PG&E of the responsibility to mind its own house.

Most significantly, while PG&E cites a number of cases purportedly in support of its laches claim (and they are, consistent with PG&E's practice in this case, *not* in

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[66] PG&E OB, pp. 43-48.

[67] PG&E OB, pp. 43-45.

[68] *See, e.g.,* NTSB Report, p. 122 ("The CPUC, as the regulator for pipeline safety within California, failed to uncover the pervasive and long-standing problems within PG&E. Consequently, this failure precluded the CPUC from taking any enforcement action against PG&E. The CPUC lost opportunities to identify needed corrective action and to follow through and ensure that PG&E completed the prescribed corrective actions in a timely manner.")

[69] DRA OB, § V.B.i.

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support), PG&E overlooks the cases holding that laches may *not* be asserted to prevent an agency's enforcement of an important policy adopted for the benefit of the public.[70] Those cases lay to rest PG&E's laches claim. In sum, they conclude that "neither the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public."[71] CPSD's prosecution of PG&E here unquestionably concerns significant policies adopted to protect the public, including the Commission's ability to enforce safety requirements applicable to utility facilities. Thus, "as a matter of law, laches is not available as a defense."[72]

IV. OTHER ISSUES OF GENERAL APPLICABILITY

A. CPSD Has Proven Records Violations

In an attempt to discredit CPSD's expert recordkeeping witnesses, PG&E makes much of their lack of engineering expertise, and their lack of gas industry expertise. With regard to Dr. Duller and Mrs. North, PG&E explains: "Lack of engineering expertise explains mistaken conclusions reached by CPSD's records consultants"[73] and "[n]either Dr. Duller nor Mrs. North had ever provided expert testimony before."[74] With regard to Ms. Felts, CPSD's engineering expert who performed an in-depth audit of PG&E's integrity management program records, PG&E complains that she "is not, and has never

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[70] *See, e.g., San Francisco v. Ballard,* 136 Cal. App. 4th 381, 395 (2006) ("We are concerned with whether city's lawsuit concerns a public policy and therefore, as a matter of law, laches is not available as a defense."); *Kajima/Ray Wilson v. LA County Metro. Trans. Auth.,* 23 C. 4th 305, 316 (2000) ("[N]either the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public." *quoting County of San Diego v. Cal. Water etc. Co.,* 30 Cal. 2d 817, 826 (1947)); *Feduniak v. Cal. Coastal Comm'n,* 148 Cal. App. 4th 1346, 1381 (2007) ("[L]aches is not available where it would nullify an important policy adopted for the benefit of the public."); and *Golden Gate Water Ski Club v. Contra Costa,* 165 Cal. App. 4th 249, 263 (2008).

[71] *Kajima/Ray Wilson v. LA County Metro. Trans. Auth.,* 23 C. 4th 305, 316 (2000) *quoting County of San Diego v. Cal. Water etc. Co.,* 30 Cal. 2d 817, 826 (1947).

[72] *San Francisco v. Ballard,* 136 Cal. App. 4th 381, 395 (2006).

[73] PG&E OB, p. 8.

[74] PG&E OB, p. 52.

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worked as a pipeline engineer."[75] On this basis, PG&E suggests that Ms. Felts' conclusion that PG&E's integrity management program was "an exercise in futility" was mistaken because she "does not have the expertise" to support her conclusion.[76] PG&E reaches this conclusion notwithstanding the fact that Ms. Felts' conclusion was based on voluminous, specific, and verifiable evidence of database errors and omissions.

It is axiomatic that missing and inaccurate pipeline records compromise the safety of records-based programs designed to ensure the safety of a gas transmissions system. Thus, PG&E's arguments regarding industry-specific or engineering expertise have no merit. Moreover, PG&E's "experts" fail to address the legitimate safety violations identified by CPSD's witnesses.

First, as TURN succinctly explains in its Opening Brief, California imposes stricter recordkeeping requirements than federal law, and not one of PG&E's three recordkeeping "experts" was familiar with California's more stringent requirements, or had considered them in their testimony.[77] One PG&E "expert" even admitted he did not consider himself an expert on recordkeeping requirements at all.[78] As such, PG&E's expert testimony is entirely irrelevant. Among other things, it fails to address the safety expectations embedded in § 451, which are the cornerstone of many of CPSD's alleged recordkeeping violations.

Second, and significantly, CPSD's three recordkeeping witnesses are the *only* witnesses in this proceeding who actually reviewed PG&E's records in any detail. Thus, *none* of PG&E "industry" experts could testify about whether PG&E actually retained certain records or not, or whether PG&E's records were accurate.[79] Nor could they testify that PG&E followed its own recordkeeping requirements.[80]

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[75] PG&E OB, p. 56.

[76] PG&E OB, p. 56.

[77] TURN OB, pp. 10-16.

[78] TURN OB, p. 14, *citing* 5 RT 783, DeLeon/PG&E.

[79] *See, e.g.,* DRA OB pp. 30-39.

[80] *See, e.g.,* DRA OB pp. 30-39.

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Had PG&E attempted to defend itself by demonstrating that it *had* certain records, it need only produce them, or have someone to testify that they were, in fact, preserved. This, however, is missing from PG&E's showing because, consistent with the findings of CPSD's experts, the fact is that significant numbers of PG&E records *are* missing or inaccurate, thus failing to meet California's recordkeeping requirements.

Given this indisputable fact, PG&E attempts to explain away its recordkeeping violations by asserting various defenses – that it was not required to retain the records, that other operators have poor recordkeeping practices, that it has improved its own recordkeeping practices, and that it was not required to comply with the voluntary standards of ASME B31.8. As CPSD explains in its Opening Brief, PG&E's affirmative defenses have no legal merit.[81] Contrary to PG&E's expert witness testimony, PG&E was required to retain all records necessary to operate a safe gas system (§ 451), and California regulations specifically required the retention of certain documents that PG&E did not retain.[82] The fact that other gas operators have poor recordkeeping practices (which was not proved) is no defense to PG&E's own unsafe practices.[83] PG&E's efforts to improve its recordkeeping practices since the San Bruno explosion are evidence that a negligent condition existed before the explosion, and that PG&E could have cleaned up its records before.[84] And PG&E cannot now rescind its 1956 representation to the Commission that it voluntarily complied with ASME standards before that time.[85]

PG&E has not met its burden of proof as to its defenses, which requires that PG&E prove each fact the existence or nonexistence of which is essential to any defense it is asserting.[86] As such, CPSD has demonstrated that PG&E has violated numerous

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[81] CPSD OB, pp. 24-26.

[82] CPSD OB, pp. 24-25.

[83] CPSD OB, p. 25.

[84] CPSD OB, p. 25.

[85] CPSD OB, p. 17, note 19, and p. 26.

[86] D.12-02-032, 2012 Cal. CPUC LEXIS 74, at *4-5.

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recordkeeping requirements, both pursuant to specific rules and § 451, and should be fined accordingly.

B. Traceable, Verifiable and Complete Is Not A New Record Keeping Standard – It Is A Clarification Of The Existing Standard That Records Must Be Complete, Accurate and Accessible

As explained in DRA's Opening Brief, and confirmed in the Opening Briefs of CPSD, TURN and CCSF, existing laws, regulations, industry standards, PG&E policies, and common sense all required PG&E to retain pipeline records for the life of its facilities.[87] Among other things, long before the construction of Line 132, § 451 required that PG&E retain all records necessary to ensure the safety of its gas pipeline system.[88] Consistent with this view, the Commission rejected PG&E's argument that it should be reimbursed for its records validation projects in D.12-12-030, finding that PG&E had been obligated to maintain its records since the installation of its lines:

> PG&E became responsible for its natural gas transmission system the day it installed facilities and equipment for the system. That responsibility includes creating and maintaining records of the location and engineering details of system components.[89]

> As required by industry practice and prudent natural gas transmission system operations, PG&E should have created and maintained records of those pressure tests.[90]

Notwithstanding the fact that the Commission has already recognized a broad-based obligation for PG&E to retain records in D.12-12-030, PG&E claims its obligations are limited to what is specifically required by Federal laws and regulations.[91] On this

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[87] DRA OB, pp. 14-18; CPSD OB, pp. 11-20; TURN OB pp. 4-7 and 10-13; and CCSF OB, pp. 9-15.

[88] TURN OB, pp. 4-7.

[89] D.12-12-030, p. 87.

[90] D.12-12-030, p. 60.

[91] While D.12-12-030 may not have opined regarding whether PG&E violated state or federal recordkeeping requirements, *see e.g.,* PG&E OB, p. 39, it clearly did opine on PG&E's recordkeeping obligations, as set forth above.

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basis it argues that the NTSB's "traceable, verifiable, and complete" standard is a new requirement.[92] In support, it explains: "As James Howe and others explained, the pipeline industry views the requirement (or at least the expectations behind its terms) as new to the industry."[93]

As PG&E well knows, just because the industry may think the standards are new does not make it so. As discussed below, PG&E mischaracterizes the "traceable, verifiable, and complete" standard, which was the NTSB's attempt to clarify *existing* requirements in response to the shocking condition of PG&E's own pipeline records.

1. PG&E's Record Keeping Failures Prompted the NTSB To Emphasize That Records Must Be "Traceable, Verifiable, and Complete"

PG&E argues that the NTSB established a "new" record keeping standard when it stated that gas pipeline records must be "traceable, verifiable, and complete."[94] PG&E is wrong.

The NTSB's urgent recommendation that PG&E survey all of its gas transmission records to ensure that PG&E calculated maximum allowable operating pressure for a pipeline using only "traceable, verifiable, and complete" records was in direct response to the discovery of PG&E's record keeping failures. The Commission recognized this fact when it adopted D.11-06-017, requiring PG&E to submit a records correction plan to the Commission:

> [T]his project to validate MAOP was set in motion by the NTSB's *justifiable alarm* at PG&E's records being inconsistent with the actual pipeline found in the ground in Line 132. The pipeline features data for Line 132 were not missing; the recorded data were factually inaccurate. Records containing inaccurate pipeline features are fundamentally different from simply missing records. *Curing PG&E's unreliable natural gas pipeline records was the obvious goal of the NTSB's recommendation to obtain "traceable, verifiable,*

[92] PG&E OB, p. 59.

[93] PG&E OB, p. 59, *citing* RT 1253-54, PG&E/Howe and other sources.

[94] PG&E OB, p. 59.

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and complete" records and, with reliably accurate data, calculate a dependable MAOP.[95]

Faced with "justifiable alarm" regarding the absolute unreliability of PG&E's records, the NTSB sought to emphasize that PG&E's gas pipeline records must be accurate, complete, and accessible. It used the words "traceable, verifiable, and complete" to clarify the obvious – that it was not enough for a single PG&E record to reflect, for example, that a pipe was seamless. There needed to be something more – something "traceable or verifiable" to back up that data point. Had PG&E's records been accurate, complete, and accessible, the NTSB would not have found it necessary to spell out this plain-as-day requirement.

PG&E emphasizes that the words "traceable, verifiable, and complete" are new words, and thus they must mean something new.[96] However, as the Pipeline Hazardous Materials and Safety Administration (PHMSA) recognized, while the words may be new, the standard is not.[97] Rather, it was an articulation of the obvious, which was evidently not so obvious to PG&E – that pipeline records must be accurate, complete, and accessible to the people who need them.

In arguing that the obligation to maintain "traceable, verifiable and complete" records is a new one, PG&E forgets that it has had a statutory obligation under § 451 to maintain and operate its system safely for over 100 years, and that maintaining accurate, complete, and accessible records of its pipeline system is critical to operating its system safely. PG&E also overlooks the multiple regulations, industry standards, and its own policies that have expressly required it to maintain its records, as well as the determination in D.12-12-030 that it had an obligation to retain records when it facilities were installed.[98]

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[95] D.11-06-017, p.17 (*emphases added*).

[96] PG&E OB, pp. 60 and 62.

[97] *See, e.g.,* PG&E OB, p. 60.

[98] *See* DRA OB, pp. 14-18; CPSD OB, pp. 11-20; TURN OB pp. 4-7 and 10-13; and CCSF OB, pp. 9-15.

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In sum, the CPSD witnesses' focus on whether PG&E met the NTSB requirement to maintain "traceable, verifiable and complete" records was simply part of their inquiry into whether PG&E had retained records necessary to ensure the safety of its gas pipeline system. PG&E's argument here is an expansion on its efforts to make distinctions between "best engineering practices," "good utility safety practices," or "good utility practices."[99] These are issues of semantics which do not alter PG&E's duty to maintain records necessary to ensure the safety of its system.

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

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

Violations 24 and 25: Data in Pipeline Survey Sheets and the GIS and Data Used in Integrity Management Risk Model

1. PG&E Did Not Ensure The Accuracy Of The Data When It Populated Its GIS And It Took No Systematic Actions To Correct Errors And Omissions Over Time

PG&E argues that its GIS data complies with all rules and that because CPSD has not demonstrated that any errors or omissions in its data have had a negative impact on its integrity management program, those errors and omissions are inconsequential.[100]

It is difficult to understand how PG&E could assert that there are no negative impacts from its GIS errors and omissions when every investigation into the reasons for the San Bruno explosion found that PG&E's shoddy recordkeeping practices – including its GIS records – contributed to the San Bruno explosion.[101] However, CPSD need not

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[99] *See, e.g.,* CPSD OB, p. 16.

[100] PG&E OB, pp. 122 and 127.

[101] DRA OB, pp. 1-5.

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show any impacts to assert violations, only that PG&E's GIS data *is* shoddy, and CPSD has done this in spades.

The crux of PG&E's defense here is *not* that its data was *accurate* – we all know that it was not. Rather, PG&E argues that data *need not be accurate* to have an integrity management program that meets "requirements." PG&E is wrong on many levels. First, as described in Section IV.A above, PG&E – wrongly – only measures violations against specific federal recordkeeping requirements. PG&E fails to consider that it is a violation of § 451 to have inaccurate and missing records regarding its gas pipeline system.

As discussed in DRA's Opening Brief, even PG&E's own witnesses assert that data need not be accurate, then clarify *numerous times* that this assertion applies *only at the beginning* of the creation of an integrity management database, that the expectation is that data will be corrected over time, and that this iterative correction process is critical to a functional integrity management program.[102] In this regard, the proven facts establish that while PG&E may have had processes in place, employees were *not* updating its data in its integrity management program with accurate information.[103] The NTSB made this same observation:

> At the NTSB investigative hearing, PG&E officials testified that if discrepancies between GIS data and actual conditions are discovered by field personnel, field engineers are required to report them to the mapping department, which validates the information. However, the documents provided to the NTSB indicate that PG&E does not use the ECDA process for validating assumed values, determining unknown values, or correcting erroneous values.[104]

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[102] DRA OB, pp. 30-34.

[103] *See* DRA OB, pp. 37-39.

[104] NTSB Report, p. 109, *see also id,* p. 110 ("As stated earlier in this section, in many cases, accurate information could have easily been obtained during ECDA digs, but the information was either not obtained or not entered. The lack of complete and accurate pipeline information in the GIS prevented PG&E's integrity management program from being effective.").

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The inaccurate records prove the point. PG&E's claims to the contrary, based on hearsay, are not supported by the evidence.[105]

At several points PG&E appears to argue that its GIS errors and omissions are not relevant because "GIS is generally not PG&E's primary source of data for most day-to-day pipeline operations."[106] As PG&E knows, this statement is misleading because GIS was the primary database relied upon to inform PG&E's integrity management program, and to prioritize pipelines for maintenance or replacement. [107] It is also relied upon by control room operators, such as the ones who could not figure out what was going on the day of the San Bruno explosion.[108]

Finally, PG&E complains that CPSD alleges that PG&E's population of its GIS database lacked "checks for accuracy, or in some cases even reasonableness."[109] PG&E admits that CPSD reaches this conclusion because of the numerous errors found by comparing the original documents with what was entered into GIS and then carried forward into other databases.[110] PG&E creatively argues that the errors alone do not "support the conclusion that PG&E's initial population of GIS lacked sufficient quality control efforts." They only establish that "PG&E's original population of its GIS database was consistent with industry norms."[111] Thus, PG&E is the spoiled child who complains about being punished because "everyone else is doing it." In addition to being a non-sequitur, this stance is inconsistent with a utility committed to taking responsibility for its actions.

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[105] *See* PG&E OB, pp. 126-128.

[106] PG&E OB, p. 122; *see also id.,* p. 27 ("… CPSD Fails to recognize that GIS data is but one component of a much broader data gathering and integration process.").

[107] Among other things, Ms. Keas testified regarding how PG&E integrated its integrity management data from various sources using GIS before San Bruno. 11 Jt. RT 1152:13 – 1155:8, Keas/PG&E.

[108] *See, e.g.,* 16 RT 2226-2227.

[109] PG&E OB, p. 122.

[110] *See, e.g.,* PG&E OB, p. 122.

[111] PG&E OB, p. 123.

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PG&E then explains that it performed some checks for accuracy, as described by its witness, Mr. Daubin.[112] PG&E admits it has no specific data or documentation on the quality control process, and that it was relying upon conversations with individuals "involved with GIS in its initial stages" to determine what occurred when the GIS was being populated.[113] PG&E finds this defense sufficient, but it is not. The shocking number of discrepancies between PG&E's paper records and its GIS demonstrate that if PG&E had any quality control when it populated its GIS – and this is questionable – it was ineffective. And the evidence is clear that PG&E performed no quality assurance in the years after the data was entered to identify and correct those initial errors and omissions.

Significantly, in addition to their findings regarding the deficiencies in PG&E's integrity management program, both the NTSB and IRP Reports identified PG&E's failure to employ effective quality control and quality assurance processes to be a critical failing of the utility.[114] The IRP Report recognized that PG&E's failure to have any

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[112] PG&E OB, p. 124.

[113] 16 RT 2239: 7-28, Cowsert-Chapman/PG&E.

[114] *See, e.g.,* NTSB Report, p. xii ("…. the probable cause of the [San Bruno explosion] was the Pacific Gas and Electric Company's (PG&E) (1) inadequate quality assurance and quality control in 1956 during its Line 132 relocation project, which allowed the installation of a substandard and poorly welded pipe section with a visible seam weld flaw that, over time grew to a critical size, causing the pipeline to rupture during a pressure increase stemming from poorly planned electrical work at the Milpitas Terminal…") and p. 116 ("Further, the NTSB notes that several of the deficiencies revealed by this investigation, such as poor quality control during pipeline installation and inadequate emergency response, were also factors in the 2008 explosion of a PG&E gas distribution line in Rancho Cordova, California."); IRP Report, p. 8 ("The lack of an overarching effort to centralize diffuse sources of data hinders the collection, quality assurance and analysis of data to characterize threats to pipelines as well as to assess the risk posed by the threats on the likelihood of a pipeline's failure and consequences.") and p. 62 ("PG&E lacks robust data and document information management systems and processes. These hinder the collection, quality assurance/quality control, and analysis of data to fully characterize threats to pipelines as well as assess the risk posed by the threats on the likelihood of a pipeline's failure.") and p. 72 ("The fact the line pipe DSAW seam type was incorrectly recorded as 'seamless' is symptomatic of PG&E's inadequate quality control and quality assurance management. The failure to properly document the seam type designation as DSAW, rather than seamless is not sufficient in itself to have prevented this incident, but had the records been more complete and the characterization been part of a more refined threat identification process, then the tragedy might have been avoided. Without a quality assurance program embedded in the integrity management process– and a feedback loop when anomalies are uncovered or pipelines do fail, mistakes happen. Unheeded lapses in the end-to-end process of pipeline integrity can lead to accidents like San Bruno.").

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quality assurance of its pipeline records allowed the misinformation about Line 132 to persist in the database for decades:

> Data management is important, but it is just one process in the chain. Quality assurance is the framework that runs throughout the entire process. A review by experienced piping engineers who question assumptions and demand substantiation should be a part of the quality assurance for the threat identification and risk ranking process. At any number of process steps in PG&E's threat identification and ranking processes, a casual review by an experienced piping engineer should have flagged the mischaracterization of the pipe seam type for the Line 132 segments that are the subject of this investigation.[115]

For PG&E to now argue – based on hearsay from employees only involved in the GIS population exercise at the initial stages – that it had processes in place to ensure the accuracy of its records is belied by PG&E's other standard practices and the evidence of the multiple errors and omissions in PG&E's GIS data.

The record is clear. PG&E's records are a mess, they have been a mess for decades, and PG&E did nothing over those decades to clean up this mess. For PG&E to argue, in the face of this mountain of evidence – including express findings by both the NTSB and the IRP to the contrary – that it was actually updating those records, or that it had adequate quality control and quality assurance in place, or that accurate records do not matter, unequivocally demonstrates that PG&E has not changed since the San Bruno explosion. Every Commission action in response to the explosion must take this fact into account in fashioning appropriate fines and remedies for PG&E's decades of malfeasance.

[115] IRP Report, p. 62.

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VI. ALLEGED VIOLATIONS PREDICATED ON THE REPORTS AND TESTIMONY OF DR. PAUL DULLER AND ALISON NORTH

VII. ALLEGATIONS RAISED BY CCSF TESTIMONY

VIII. ALLEGATIONS RAISED BY TURN TESTIMONY

IX. ALLEGATIONS RAISED BY CITY OF SAN BRUNO TESTIMONY

X. CONCLUSION

For all the reasons set forth herein, the decision in this matter should find that PG&E's recordkeeping deficiencies constitute violations of Public Utilities § 451. It should further find that these deficiencies constitute unreasonable errors and omissions and that the direct and indirect costs incurred to correct those errors and omissions must be disallowed pursuant to Public Utilities Code §§ 451 and 463. The decision should also adopt a process to appoint an independent monitor to oversee PG&E's gas pipeline testing, replacement, and recordkeeping activities to ensure they are performed in an appropriate manner.

Appendices A and B, attached to DRA's Opening Brief in this proceeding, contain proposed Findings of Fact and Conclusions of Law necessary to implement these recommendations.

Respectfully submitted,

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