

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Adopt
New Safety and Reliability Regulations
for Natural Gas Transmission and
Distribution Pipelines and Related
Ratemaking Mechanisms.

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

**OPENING BRIEF
OF THE SAFETY AND ENFORCEMENT DIVISION
CONCERNING THE RULING OF CHIEF ADMINISTRATIVE LAW
JUDGE AND ASSIGNED ADMINISTRATIVE LAW JUDGE DIRECTING
PACIFIC GAS AND ELECTRIC COMPANY TO SHOW CAUSE WHY IT
SHOULD NOT BE SANCTIONED BY THE COMMISSION FOR
VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES OF
PRACTICE AND PROCEDURE**

I. INTRODUCTION

Pursuant to Commission Rule of Practice and Procedure 13.11, the California Public Utilities Commission's ("Commission") Safety and Enforcement Division ("SED") files this opening brief in Rulemaking (R.) 11-02-019. This brief responds to the "Ruling of Chief Administrative Law Judge (ALJ) and Assigned Administrative Law Judge Directing Pacific Gas and Electric Company to Show Cause Why It Should Not Be Sanctioned by the Commission for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure" of August 19, 2013 ("Ruling").

As noted by the Commission's Ruling,

Due to the serious issues raised by the attempted July filing, PG&E is ordered to appear at the hearing scheduled below and show cause why it should not be sanctioned for violating Rule 1.1 of the Commission's Rules of Practice and Procedure. Pursuant to Public Utilities Code Section 2107 the Commission may impose penalties for each offense, if found

to be supported by evidence at the hearing, of not less than \$500 nor more than \$50,000 for each offense.

Aug. 19, 2013 Ruling in R.11-02-019, at p. 4.

II. SUMMARY OF VIOLATIONS

Pacific Gas and Electric Company (“PG&E”) misled the California Public Utilities Commission (“Commission”) concerning its completion of its validation of the Maximum Allowable Operating Pressures (“MAOP”) on its natural gas transmission system. PG&E's misleading information permitted PG&E to unsafely raise its MAOP throughout the system, in violation of the Commission's directives and standards. PG&E failed to timely and accurately inform the Commission of errors and incompleteness in its MAOP validation process violating Decision (“D.”) 11-12-048. The decision lifted MAOP restrictions based on PG&E’s assurances that the MAOP validation process was subject to careful quality assurance procedures and had been completed.¹

PG&E first learned of possible errors in its MAOP validation process on October 18, 2012 but failed to inform the Commission until July 3, 2013, more than eight months after PG&E, certain PG&E employees, and its counsel learned of these errors. When PG&E finally disclosed this information to the Commission, the utility further misled the Commission by attempting to de-emphasize and in effect hide errors in the validation process through an “Errata” rather than a petition for modification of D.11-12-048. SED also notes that it had an outstanding continuing data request in I.11-02-016 for information concerning possible errors in PG&E’s MAOP validation process.

SED contends that PG&E’s conduct in this proceeding regarding critical maximum pressures on segments in its transmission system warrants penalties for violations of Rule 1.1 because:

¹ D.11-12-048 specifically states, “PG&E operates a natural gas transmission and distribution system. As the operator, PG&E must ensure that the system is operated safely. PG&E presented pressure test results, supporting information, and the testimony of its responsible engineer verifying that the maximum operating pressure of Lines 101, 132A, and 147 can be safely increased to 365 psig. . .Therefore, we conclude that PG&E has demonstrated that the maximum operating pressure of Lines 101, 132A, and 147 can be safely increased to 365 psig.” D.11-12-048 at 8-9.

- PG&E knew as early as October 18, 2012, that errors and records insufficiencies existed in its Pipeline Features List used to validate maximum segment pressures;
- Rather than advising the Commission as a regulatory body in writing of these errors, PG&E first chose to communicate with a Commission staffer, who acted in an advisory capacity only. SED advocacy staff did not learn of PG&E's contact with this individual until after the initiation of this Order to Show Cause;
- PG&E failed to provide this staffer with requested documents and information concerning the errors until the end of May, 2013, and further misrepresented to the Commission in this OSC proceeding the contact's reaction to the information provided by PG&E (no staff personnel has ratified or approved PG&E's submissions.);
- PG&E delayed notifying the Commission and parties of the potential errors in its MAOP validation process until July 3, 2013, some eight months after PG&E first recognized the potential error in its validation process;
- PG&E was aware of SED's continuing data request concerning potential errors in PG&E's MAOP validation process but failed to notify SED; and
- Using an Errata to notify the Commission of errors in the pipeline features list used in PG&E's critical MAOP Validation process—effectively disguising rather than clearly identifying the serious errors in its MAOP calculations.

PG&E's discovery of A.O. Smith pipe installed in 1929, in Line 147 segment 109, emphasizes SED's position in the Recordkeeping OII (and in this OSC proceeding) that unknown pipe material and other missing critical pipeline information directly reduces pipeline safety. Moreover, PG&E's eight month delay in revealing such deficiencies to the Commission raises serious doubts about its critical MAOP validation process.

III. BACKGROUND

On October 14, 2011, PG&E's outside counsel, Mr. Joseph Malkin, filed a report in R.11-02-019. In this report, Mr. Malkin, on PG&E's behalf, echoed the Commission in stating, "The fundamental goal of this unprecedented effort is to 'ensure safe operations

and to restore public trust,' pulling together complete and detailed records with which to validate the MAOP of PG&E's gas transmission system."²

On December 19, 2011, as part of Rulemaking ("R.") 11-02-019, the Commission issued D.11-12-048, which, among other things, established maximum operating pressures for lines 101, 132A, and 147. D.11-12-048 authorized PG&E, based largely on PG&E representations, to operate these lines at a pressure no higher than 365 psig.³

To validate the strength and integrity of these lines to operate at this pressure, PG&E stated that it had "[d]eveloped a pipeline features list showing each component and its characteristics, and completed MAOP validation for all pipelines and associated components, including shorts, whether they are located in high consequence areas or not."⁴ PG&E began its validation process for Lines 101, 132A, and 147, with associated shorts, by creating a Pipeline Features List ("PFL") showing each component of the pipeline facilities. PG&E based its pipeline features list on design plans, as-built drawings, purchase orders, pressure test records, coating information, as well as other available documents and factors.⁵ PG&E then reviewed the pipeline features list to establish the maximum pressure for each feature.⁶ PG&E's Vice President of Gas Transmission, Maintenance, and Construction, Mr. Kirk Johnson, testified under oath that PG&E's engineers validated the engineering and construction through records review, as documented in the exhibits to the supporting information.⁷

In reliance upon the statements of Mr. Johnson that PG&E had carefully reviewed the engineering and construction of the segments, as well as the results of the pressure

² "Report of Pacific Gas and Electric Company on Status of Maximum Allowable Operating Pressure Validation Project", Oct. 14, 2011, p. 2, citing D.11-06-017 at p.17 and OP # 1 at p. 30, in R.11-02-019.

³ D.11-12-048, p. 1.

⁴ D.11-12-048, p. 4.

⁵ *Id.*, at p. 7.

⁶ *Id.*, at p. 7.

⁷ *Id.*, at p 8.

tests. The Commission in D.11-12-048 concluded that the maximum operating pressure may be safely increased to 365 psig for Lines 101, 132A, and 147.⁸

On January 31, 2012 and August 16, 2012, in I.11-02-016, PG&E respectively responded to SED Data Request 24, Question 2. Both of these were standing data requests, and both asked PG&E to provide lists of all of its reconditioned pipe in its transmission system. However, neither PG&E response to these data requests identified the existence of any re-used or reconditioned pipe in Line 147, although the pipeline features list prepared by PG&E after the San Bruno tragedy was intended to identify all such pipe.

On February 7, 2012, Mr. Malkin, on PG&E's behalf, filed a follow-up report in R.11-02-019. The February 7 2012 report stated,

As discussed in the courtesy report filed on October 14, 2011, PG&E committed to completing MAOP validation for gas transmission pipeline segments in urban, populated areas (known as High Consequence Areas or HCAs), any segments necessary for immediate pressure restoration, and segments that have changed in class location from the June 2011 study (from Class 1 or 2 to Class 3 or 4). These segments amounted to 2,088 miles that PG&E committed to complete by January 31, 2012. In this courtesy report, PG&E confirms that, as of January 31, 2012, it completed the 2,088 miles.⁹

PG&E's Feb. 7, 2012 Report at p. 1.

On October 15, 2012, PG&E discovered a gas leak at mile-point 2.29 of Line 147, near the intersection of Rogers Avenue and Brittan Avenue in San Carlos on what is known as Segment 109.¹⁰ On October 18, 2012, PG&E had a field engineer investigate a segment of Line 147 Segment 109 near a leak at mile point 2.29. After exposing a section of this segment, this field engineer realized that weld of the exposed section of

⁸ *Id.*, at pp. 8-9.

⁹ Report of Pacific Gas and Electric Company on Status of Maximum Allowable Operating Pressure Validation Project, p. 1. See <http://docs.cpuc.ca.gov/PublishedDocs/EFIELD/REPORT/159755.PDF>

¹⁰ Verified Statement of Pacific Gas and Electric Company's Vice President of Gas Transmission Maintenance and Construction in Response to Ruling of Assigned Commissioner and Assigned Administrative Law Judge ("Verified Statement"), p. 6, ¶ 25.

this pipe was manufactured by A.O. Smith and the long seam was Single Submerged Arc Welded (“SSAW”) and not Double Submerged Arc Weld (DSAW) as the PFL erroneously indicated.¹¹ On November 14, 2012, after discovering this error in PG&E’s records on Line 147, this pipeline engineer emailed other PG&E departments informing them that PG&E’s PFLs also had an error on Line 147.¹²

Very shortly after October 18, 2012, Mr. Johnson was informed of this error relating to Line 147.¹³ Mr. Malkin was effectively informed of this error at the same time as Mr. Johnson.¹⁴ SED also issued data requests asking PG&E to identify when Mr. Johnson’s superiors were each informed of this error, but PG&E refused to provide a data response in time for the filing of this brief.

In mid-November of 2012, PG&E found that its PFL erroneously characterized Line 147, Segments 103, 103.1 and 103.6 as seamless.¹⁵ On January 25, 2013, a PG&E employee determined that an exposed span of pipe on Segment 103.1, like that of segment 109 of Line 147 was also SSAW, not seamless,¹⁶ which corroborated the errors in PG&E’s PFL. On January 29, 2013, PG&E’s test results confirmed this exposed section of pipe was SSAW.¹⁷

In January of 2013, PG&E found that its PFL erroneously characterized Line 147 segments 103, 103.1, and 103.6 as seamless. One critical safety issue that arose in the proceeding was PG&E's historical use of reused, reconditioned pipe, such as A.O. Smith pipe, and PG&E's failure to track and identify the locations of such pipe in PG&E’s transmission system. This PG&E failure is a clear and serious safety hazard. The final

¹¹ *Id.* at p. 7, ¶ 27 and 28.

¹² *Id.* at p. 8, ¶ 33.

¹³ R.11-02-019 Sept. 6, 2013, Vol. 16 B Tr. 2474.

¹⁴ R.11-02-019 Sept. 6, 2013, Vol. 16 A Tr. 2383.

¹⁵ Verified Statement, p. 9, ¶ 39. See also: ALJ Bushey’s direction in R.11-02-019 Sept. 6, 2013, Vol. 16 A Tr. 2383: “It’s not possible that Mr. Malkin could have known about this before Mr. Johnson knew about it. So let’s take that date and assume that’s the date that he knew.”

¹⁶ Verified Statement, pp. 9 and 10, ¶ 39, 40 and 41.

¹⁷ Verified Statement, p. 10, ¶ 41.

phase of PG&E's pipeline validation was supposed to identify the location and characteristics of all such pipe in the system. Yet PG&E has obviously not accomplished this, as can be confirmed by PG&E's quiet discovery on Line 147 of previously unidentified AO Smith pipe originally installed in 1929. Therefore, PG&E has certainly misled the Commission by representing that it had adequate records to safely set MAOP on Line 147.¹⁸

On January 31, 2013, PG&E President Chris Johns represented in a letter to the National Transportation Safety Board that,

For recommendation P-10-3 (MAOP Validation), PG&E has completed the determination of the valid maximum allowable operating pressure (MAOP), based on the weakest section of the pipeline or component. The purpose of the MAOP validation is to ensure safe operation of natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas (HCA) that have not had a MAOP established through prior hydrostatic testing.

In total, MAOP validation was performed for all 2,088 miles of these transmission pipelines.”

On July 3, 2013, just before the July 4 holiday and a four day weekend for many, PG&E's outside counsel, Mr. Joseph Malkin, filed a document entitled “Errata to Pacific Gas and Electric Company's Supporting Information for Lifting Operating Pressure Restrictions on Lines 101 and 147”. (Exhibit OSC 1). This filing stated “After receiving Decision 11-12-048, PG&E identified errors in some of the supporting information for Lines 147 and 101”. (Exhibit OSC 1, at 1). However, PG&E received an email from the Commission's docket office on August 2nd, 2013 rejecting its July 3rd, 2013 filing of the Errata, and telling PG&E to resubmit the information on the Errata as an amendment.¹⁹ This notification through the Errata occurred more than eight months following PG&E's discovery of potential errors in its PFLs for these pipeline segments.

¹⁸ PG&E responded to SED Data Request 24, Ques. 2 on Jan. 31, 2012.

¹⁹ R.11-02-019 September 6, 2013, Vol. 16 A Tr. 2377.

PG&E received a report dated September 6, 2013 from Anamet Inc. entitled “Metallurgical Evaluation of a Section from L-147 MP 2.2 Brittan Ave. and Rogers Ave., San Carlos.” This document states,

“One section of 20-inch diameter gas transmission pipe identified as L-147 MP 2.2 Brittan Ave. and Rogers Ave., San Carlos was submitted by PG&E for metallurgical evaluation. The subject section had a PLIDCO weld cap permanent repair, and an A.O. Smith longitudinal seam weld...Original installation was reported to have been on L-100 in 1929, but at some point in time the section was removed, reconditioned, and subsequently installed into L-147 in 1957. . .”²⁰

This report clearly establishes the pipe found in L-147 to be reused, reconditioned pipe.

IV. RULE 1.1 VIOLATION

PG&E, Mr. Malkin and Mr. Johnson each misled the Commission in Violation of Commission Rules of Practice and Procedure Rule 1.1 (“Rule 1.1”). Rule 1.1 provides,

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Title 20, C.C.R. § 1.1

In D.01-08-019, the Commission imposed \$ 200,000 in penalties against Sprint PCS for Rule 1. Violations.²¹ D.01-08-019 provides guidance in addressing many of the Rule 1.1 issues raised here by PG&E’s failure to timely notify the Commission of critical errors in its MAOP validation process. In D.01-08-019, the Commission found that

²⁰ Declaration of Sumeet Singh Supplementing the Verified Statement of Pacific Gas and Electric Company’s Vice President of Gas Transmission Maintenance and Construction in Response to Ruling of Assigned Commissioner and Assigned Administrative Law Judge (“Sumeet Singh’s Supplementing Testimony”), Sept. 13, 2013, at p. 1.

²¹ D.01-08-019 at p. 17. Rule 1 was the predecessor of Rule 1.1.

Sprint PCS had violated Rule 1.1 by failing to disclose relevant information that it had certain NXXs (telephone prefix numbers) in its possession. Like Mr. Malkin here when confronted, Sprint PCS claimed the omission was due to unintentional error. Also like PG&E, when claiming that it did not intend to deceive the Commission, Sprint PCS pointed out that it made the information available to staff through other means. In response to this claim, the Commission properly observed that later disclosure does not correct the failure to produce documents in discovery.

There is no dispute that Sprint PCS failed to disclose the information on the two NXX codes sought by the staff in discovery...Merely because a party initially withholds information from the staff for a particular purpose and then later discloses the information in some different or unrelated context(s) does not necessarily mean that the initial nondisclosure was purely unintentional. The timing or manner in which information is disclosed could potentially have a material effect on the outcome desired by the disclosing party. If a party is able to simply claim ignorance of the initial omission, the party would benefit from the initial nondisclosure and escape any sanctions or penalties.

(D.01-08-019, 2001 Cal. PUC LEXIS 653 at pp. *13 - *14.)

The Commission then clarified that intent to deceive is not required to prove a Rule 1.1 violation,

...the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation.

(*Ibid.*)

In summary, the Commission found that Sprint PCS violated Rule 1 because it withheld material information that Sprint PCS *should have* produced the requested information in discovery. (*Id.* at p. 15.) The Decision notes that “staff must be able to rely upon the representations made to it in response to data requests in order to carry out

its duties of protecting the public interest effectively.” (*Id.* at p. 27.) The Commission fined Sprint PCS \$ 200,000 because the violation undermined the regulatory process.²²

V. DISCUSSION OF RULE 1.1 VIOLATIONS

On December 19, 2011, as part of Rulemaking (“R.”) 11-02-019, the Commission issued D.11-12-048, which concluded that that the maximum operating pressure may be safely increased to 365 psig for Lines 101, 132A, and 147.²³ The reasoning behind this conclusion demonstrated explicit reliance upon PG&E’s representations to the Commission that it had:

- Developed a pipeline features list to showing each component and its characteristics;²⁴
- Based this pipeline features list on design plans, as-built drawings, purchase orders, pressure test records, coating information and other available documents;²⁵
- Reviewed the PFLs to establish the maximum pressure for each feature.²⁶

A. **Certain Individuals Representing PG&E Knew the Commission’s Decision in This Proceeding Relied Upon PG&E’s Erroneous Information On a Critical Issue of MAOP for Its Transmission System, But Delayed Eight Months in Calling this to the Commission’s Attention**

PG&E and certain of its officials knew that D.11-12-048 relied upon PG&E’s erroneous information on a critical issue of MAOP for its transmission system, but delayed eight months in calling this to the Commission’s attention. In lifting the December 2011 restrictions that lowered MAOP system-wide, the Commission explicitly relied upon the representations of Mr. Kirk Johnson, PG&E’s Vice President of Gas Transmission, Maintenance and Construction, that:

²² D.01-08-019 at p. 17.

²³ D.11-12-048, at p. 8.

²⁴ *Id.*, at p. 4.

²⁵ *Id.*, at p. 7.

²⁶ *Id.*, at p. 7.

- PG&E’s engineers had validated the engineering and construction through records review, as documented in the exhibits to the supporting information;²⁷
- In his professional judgment, Lines 101, 132A, and 147 were safe to operate at 365 psig.²⁸

In addition, Mr. Malkin signed multiple documents to the Commission regarding the status of PG&E’s MAOP validation effort, at least one of which suggested that the Commission should lift operating pressure restrictions on Lines 101, 132A, and 147, which led to D.11-12-048. In short, Messrs. Malkin and Johnson both knew that D.11-12-048 lifted operating pressure restrictions on these transmission lines in reliance upon their professional statements to the Commission.

Moreover, very shortly after October 18, 2012, Messrs. Johnson, Malkin, and certain other PG&E executives were informed by certain PG&E managers of the fact that PG&E’s records and PFL erroneously failed to show Line 147 Segment 109 as A.O. Smith pipe.²⁹ However, in spite of their knowledge that D.11-12-048 relied upon their representations about the pipeline features list and accurate records, Messrs. Malkin and Johnson delayed in disclosing this error to the Commission until July 3rd of 2013, a total of approximately eight months.

B. Certain Individuals Representing PG&E Used a Procedurally Inappropriate Vehicle to Inform the Commission that D.11-12-048 Relied Upon Erroneous PG&E Information in Raising MAOP on Its Transmission System

On behalf of PG&E, Mr. Malkin signed an Errata to disclose the errors discussed above.³⁰ Mr. Malkin misled the Commission because he failed to instruct that PG&E file a petition to modify D.11-12-048 giving proper notice to the Commission and the parties

²⁷ *Id.*, at p. 8.

²⁸ *Id.*, at p. 8.

²⁹ Verified Statement, p. 7, paragraphs 27 and 28, and p. 8, ¶ 33; and R.11-02-019 Sept. 6, 2013, Vol. 16 A Tr. 2474.

³⁰ Exhibit OSC 1, at p. 1.

to this proceeding based upon the errors to the information on Line 147. Both Mr. Malkin and Mr. Johnson learned of these errors in MAOP validation in October or November of 2012.

C. Individuals Representing PG&E Falsely Stated to the Commission that PG&E Had Gathered Complete Records, Which Were Necessary to Validate Critical MAOP Levels to Ensure Safe Operations

Mr. Joseph Malkin, PG&E's outside counsel, misled the Commission when he falsely stated through several filings in this Rulemaking that PG&E had gathered complete records to validate the MAOP of PG&E's gas transmission lines in High Consequence Areas. On October 14, 2011, Mr. Malkin signed his name to the "Report of Pacific Gas and Electric Company on Status of Maximum Allowable Operating Pressure Validation Project," Oct. 14, 2011, at page 2.

On February 7, 2012, Mr. Malkin filed another document in this proceeding which represented that PG&E had completed its MAOP validation for gas transmission pipeline segments in High Consequence Areas.³¹

In spite of Mr. Malkin's statements to the Commission that by January 31, 2012, PG&E had the requisite complete records to validate its MAOP on transmission lines in High Consequence Areas, PG&E's PFL for Line 147 was actually based upon incomplete records because it lacked information from certain records showing that Line 147 segment 109 contained re-conditioned A.O. Smith pipe with SSAW welds.

Several facts show that PG&E was aware that its PFL contained information about Line 147 Segment 109 based upon incomplete records. First, on October 18, 2012, PG&E's field engineer investigated Line 147 Segment 109 near a leak at mile point 2.29 and realized that the exposed long seam weld appeared to be A.O. Smith.³² Second, on November 14, 2012, the pipeline engineer noted that he observed that the pipeline features list had an error on Line 147, Segment 109 in that it inaccurately characterized

³¹ *Id.*, p. 1.

³² Verified Statement, p. 7, ¶ 27.

the pipe as seamless when it was, in fact, SSAW.³³ Third, PG&E had documents in its files that confirmed that PG&E had installed a 20 inch diameter piece of A.O. Smith pipe that had been removed from another part of PG&E's system, reconditioned, and reinstalled on Line 147 mile post 2.2 at Brittan Avenue and Rogers Avenue in San Carlos.³⁴ Specifically, PG&E had a document in its possession dated July 19, 1956 that authorized the removal of approximately 1400 feet of 20 inch main from another location and reinstallation of it in transmission line number 147 at the "Britton Avenue Extension, San Carlos."³⁵ These facts clearly demonstrates that PG&E possessed a record from 1956 that contained vital information necessary for the validation of its MAOP on Line 147, but PG&E failed to use this information in its MAOP validation process. Had PG&E accurately characterized Line 147 segment 103 as containing A.O. Smith pipe, requiring a lower MAOP, the Commission would not have approved the restoration of MAOP for this and adjoining pipes to 365 psig. Thus, for a period of months, PG&E operated part of the Peninsula transmission system at high pressures beyond safe levels.

For months, PG&E misled the Commission by representing that it had the requisite complete records to validate its MAOP on transmission lines in High Consequence Areas. Moreover, PG&E has acknowledged that,

PG&E does not in all instances know where reconditioned pipe has been placed in its transmission system. In the building of its Pipeline Features List (PFL), PG&E has been gathering this information where it is available.³⁶

³³ Verified Statement, Page 7 Paragraphs 27 and 28, and p. 8, ¶ 33.

³⁴ Sumeet Singh's Supplementing Testimony, p. 1.

³⁵ See PG&E Data Response 003-005 Atch 01, Page 3. Note: PG&E provided Safety and Enforcement Division with this document on the afternoon of September 5, 2013, the day before hearings in this Order to Show Cause.

³⁶ I.11-02-016, Pacific gas and Electric Company's Response to the Consumer Protection and Safety Division's Reports: Records Management Within the Gas transmission Division of PG&E Prior to the Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010 and Report and Testimony of Margaret Felts Testimony of Witnesses, p. 3-32.

Also in I.11-02-016, PG&E provided a list showing more than 2,500 instances of assumed SMYS values greater than 24,000 psi on pipe with unknown characteristics³⁷ even though the Code of Federal Regulations requires an operator to assume a minimum SMYS of 24,000 psi when the SMYS of a pipe cannot be clearly supported by actual data (records).³⁸

D. In Spite of Standing Data Requests, PG&E and its Counsel Did Not Inform SED about Records Errors

In I.11-02-016, SED had a standing data request asking PG&E to provide lists of all of its reconditioned pipe in its transmission system. In response, PG&E did not include information about re-conditioned pipe in Line 147.³⁹ Moreover, SED is unaware of PG&E providing information about records errors about Line 147 in spite of multiple data requests asking specifically about pipeline records omissions and/or errors. After PG&E discovered the error on Line 147 in October or November 2012, they did not disclose it expeditiously even though MAOP validation is critical to pipeline safety.

As a result, PG&E misled the course of staff's investigation in I.11-02-016 in violation of Rule 1.1. Moreover, the fact that these individuals did not disclose this error while the record of I.11-02-016 was open only adds to the seriousness of the delay in informing the Commission and Staff of the errors in MAOP validation in R.11-02-019 or in the other OIIs concerning the San Bruno explosion and fire. PG&E was essentially operating a pipeline that contained potentially defective pipe at reduced operating pressures while it allowed the Commission to believe that the pipe was safely operating at a higher MAOP.⁴⁰

³⁷ I.11-02-016, Excerpt of PG&E Data Response to Joint TURN and CPSD Data Request 01Q02_Atch01.

³⁸ 49 C.F.R. §192.107(b)(2).

³⁹ PG&E responded to SED Data Request 24, Ques. 2 on Jan. 31, 2012.

⁴⁰ Verified Statement, ¶ 14. PG&E admits the MAOP pressure for Line 147 should be 330 psig (instead of the previously CPUC-approved 365 psig which was based on PG&E's MAOP validation errors), assuming a joint efficiency factor of 0.8 for A.O. Smith SSAW pipe. *See also:* GasPipelineSafetyOIR_DR_SED_001-002_Atch04 (Errata), PG&E reduced the operating pressure for L-147 to 300 psig in May 2012.

VI. REMEDIES: PG&E AND EACH RESPONSIBLE INDIVIDUAL REPRESENTING PG&E WHO DELAYED INFORMING THE COMMISSION AND STAFF SHOULD BE FINED

California Public Utilities Code Section 2112 provides,

Every person who, either individually, or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance, in a case in which a penalty has not otherwise been provided for such person, is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.⁴¹

Public Utilities Code § 2112.

As demonstrated above, PG&E, represented by Messrs. Malkin and Johnson, misled the Commission as described above and, therefore, failed to comply with Commission Rule of Practice and Procedure Rule 1.1 in several ways. First, by SED's estimate, each committed a daily violation of Rule 1.1 between the time the individual learned of the error on transmission line 147 (October 2012), but delayed in informing the Commission of this error until July 3, 2012. This constitutes approximately eight months or 240 days of violations, which merits up to approximately \$ 240,000 of fines for each individual.

PG&E and Mr. Malkin also misled the Commission by filing an Errata instead of a petition to modify D.11-12-048, amendment to its Report of October 31, 2011 supporting the lifting of MAOP restrictions, or other pleading which would have given clear notice of the errors to the Commission, Staff, and the parties in the Rulemaking. In accordance with Section 2112, this violation could result in a fine of \$ 1,000.

⁴¹ Verified Statement, ¶ 14, PG&E admits the MAOP for Line 147 to 330 psig (instead of the approved 365 psig), assuming a joint efficiency factor of 0.8 for A.O. Smith SSAW pipe. *See also:* GasPipelineSafetyOIR_DR_SED_001-002_Atch04 (Errata), PG&E reduced the operating pressure for Line 147 to 300 psig in May 2012.

Mr. Malkin also misled the Commission by falsely stating on October 24, 2011, and February 7, 2012, that PG&E had pulled together complete and adequate records to validate PG&E's maximum allowable operating pressure and ensure safe operations in high consequence areas. In fact, as shown above, PG&E did not in fact gather complete and adequate records to achieve this purpose, and waited until September 5, 2013,⁴² and September 13, 2013⁴³ to provide information to the Commission that showed the earlier statements the PG&E's MAOP validation was not accurate and complete. By SED's conservative estimate, from February 7, 2012 to September 5, 2013 is approximately 575 days. Therefore, this violation could result in a fine up to \$ 575,000. SED recommends a fine of at least \$ 75,000 for this violation, a \$ 25,000 fine for PG&E, a \$ 25,000 for Mr. Johnson's conduct, and a \$ 25,000 fine for Mr. Malkin's conduct.

SED also recommends that the Commission prohibit PG&E from reimbursing Mr. Malkin or Mr. Johnson directly or indirectly for these fines.

Finally, the fact that Mr. Malkin did not disclose the records error on Line 147 in I.11-02-016 is violation of Rule 1.1. However, SED does not recommend additional fines for this violation to avoid any possible claims by Mr. Malkin of double counting of the violation associated with PG&E's delay in disclosing this information to the Commission.

VII. CONCLUSION

For the reasons stated above, CPSD requests that significant penalties be imposed on PG&E, Mr. Malkin and Mr. Johnson for misleading the Commission regarding PG&E's completion of its MAOP validation process, the quality control and quality assurance procedures used in that process, and for failure to timely notify the Commission of errors in its PFL and MAOP pressures allegedly validated by PG&E, resulting in PG&E having to reduce certain MAOP pressures under PG&E protocols and federal regulations. Consequently, SED recommends a total fine of at least \$ 75,000 for

⁴² See attached email, dated 9/5/2013 at 2:17 PM, which included PG&E's Data Response 003-005Atch01.

⁴³ See Sumeet Singh's Supplementing Testimony, p. 1.

the Rule 1.1 violations identified above, to be imposed on PG&E, Mr. Malkin, and Mr. Johnson.

Respectfully submitted,

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