

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

COMMISSIONER MICHEL P. FLORIO,
COMMISSIONER CATHERINE J.K. SANDOVAL,
COMMISSIONER MARK J. FERRON,
CHIEF ADMINISTRATIVE LAW JUDGE KAREN V. CLOPTON and
ADMINISTRATIVE LAW JUDGE MARIBETH A. BUSHEY,
co-presiding

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
Rate-making Mechanisms.

) ORDER TO SHOW
CAUSE

) Rulemaking
11-02-019

REPORTER'S TRANSCRIPT
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1 SAN FRANCISCO, CALIFORNIA

2 SEPTEMBER 6, 2013 - 10:05 a.m.

3 * * * * *

4 CHIEF ADMINISTRATIVE LAW JUDGE CLOPTON:

5 Good morning. I'm Karen Clopton. I'm
6 the Chief Administrative Law Judge. And as
7 you all are aware, safety is our number one
8 priority. And towards that end, I'm going to
9 address certain safety concerns in this
10 venue. The restrooms are located at the far
11 end of the lobby outside of the security
12 screening area.

13 In the event of an emergency,
14 please calmly proceed out of the exits. We
15 have four exits: Two in the rear, and one on
16 either side of the speakers. In the event
17 that we do in fact need to evacuate the
18 building, for the rear exits, head through
19 the courtyard and down the front stairs
20 across McAllister. For the side exits, go
21 out of the exits, and you would end up on
22 Golden Gate Avenue, and you would proceed
23 around to Van Ness.

24 Our assembly point is between the
25 War Memorial building and the Opera building,
26 which is on Van Ness between McAllister and
27 Grove.

28 In the event of an emergency, I

1 will be designating Judge Anthony Colbert to
2 call 911. If Judge Colbert could raise his
3 hand.

4 (ALJ Colbert complied.)

5 CHIEF ALJ CLOPTON: Thank you.

6 ADMINISTRATIVE LAW JUDGE BUSHEY: Thank
7 you. Are there any other matters before we
8 go on the record?

9 Hearing none, the Commission will
10 come to order. This is the time and place
11 set for the hearing in response to ruling of
12 the Chief Administrative Law Judge and
13 assigned Administrative Law Judge directing
14 Pacific Gas & Electric Company to show cause
15 why it should not be sanctioned by the
16 Commission for violation of Rule 1.1 of the
17 Commission's rules of practice and procedure.

18 Good morning. I'm Administrative
19 Law Judge Maribeth Bushey. I am the assigned
20 Administrative Law Judge to this proceeding.
21 Also presiding with me this morning is Chief
22 Administrative Law Judge Clopton, as well as
23 Commissioners Florio, Sandoval and Ferron.

24 Our order of procedure this morning
25 will be we will begin with a statement from
26 the Chief Administrative Law Judge, to be
27 followed by a brief statement from the City
28 of San Bruno, at which time we will then turn

1 to Pacific Gas & Electric Company to put on
2 their presentation.

3 Are there any questions before we
4 begin?

5 Hearing none, then, we'll turn to
6 the Chief Administrative Law Judge.

7 Judge Clopton?

8 CHIEF ALJ CLOPTON: Thank you, Judge
9 Bushey. The purpose of today's hearing is to
10 offer Pacific Gas & Electric Company the
11 opportunity to show cause why the Commission
12 should not impose sanctions on PG&E for
13 violation of Rule 1.1 of the Commission's
14 Rules of Practice and Procedure.

15 As explained in detail in our show
16 cause ruling setting this hearing, PG&E
17 attempted to file with this Commission on
18 July 3rd, 2013, an errata to an application
19 it filed on October 31st, 2011. That
20 document revealed two errors in the 2011
21 filing, including inaccurately recording a
22 pipeline segment as being comprised of
23 seamless pipe, when in fact it was not.

24 Rule 1.1 is a core principle of
25 practice before the Commission and requires
26 that any person who transacts business with
27 the Commission agree to never mislead the
28 Commission or its staff by an artifice or

1 false statement of law or fact.

2 The Administrative Law Judge
3 Division has a mission statement, it explains
4 that we provide an independent forum for the
5 fair, unbiased, reasoned, transparent and
6 efficient disposition of proceedings.

7 Similarly, our division's vision
8 statement requires the Commission's judges to
9 provide a just, reasoned, efficient and
10 innovative resolution of matters in a manner
11 that ensures integrity, due process and
12 transparency, and respects the dignity of all
13 participants.

14 We cannot perform our duties to the
15 Commission and residents of the State of
16 California without timely and accurate
17 information from parties. That is why we
18 have Rule 1.1. The only procedural rule
19 applicable to changed facts such as claimed
20 to be present here is Rule 16.4 which sets
21 forth the procedure for seeking to modify an
22 issued Commission decision based on
23 allegations of new or changed facts, a rule
24 under which PG&E chose not to proceed.

25 Instead, PG&E attempted to file an
26 errata, which is not provided for in our
27 rules. It is occasionally used by parties to
28 correct typographical errors in documents,

1 usually prior to offering the corrected
2 version for the record. This typical
3 sequence is dramatically different from the
4 facts presented here, the post final decision
5 status of line 147 and 101 pressure
6 restoration. PG&E's procedural choice is
7 particularly troubling because the issues in
8 the pressure restoration decision go to the
9 heart of the safe operation of these natural
10 gas transmission lines.

11 For those of you who consistently
12 attend Commission meetings, you will have
13 heard Commissioner Sandoval repeat our
14 mission as defined in Public Utilities Code
15 Section 451, which requires every public
16 utility in California to furnish and maintain
17 such adequate, efficient, just and reasonable
18 service, instrumentalities, equipment and
19 facilities as are necessary to promote the
20 safety, health, comfort and convenience of
21 its patrons, employees and the public.

22 No issue is more important to us
23 than our responsibility to all Californians
24 to ensure the safe operation of public
25 utility systems, and we must have accurate
26 and timely information from all parties that
27 appear before us in order to accomplish this
28 mission.

1 As the Chief Administrative Law
2 Judge, I take it as my personal
3 responsibility to ensure that all parties
4 comply with the letter and spirit of
5 Commission regulations.

6 Many of you participated in our
7 *Soup to Nuts* process review in 2009,
8 including representatives from the utilities.
9 You had ample opportunity, and continue to
10 have ample opportunity, to have input into
11 our rules and regulations.

12 The fact pattern to be addressed in
13 today's hearing directly implicates the core
14 principles of our division and this agency.

15 I'm here today to personally assess
16 the credibility of the explanation to be
17 offered by PG&E in response to the show cause
18 ruling and to provide that assessment to the
19 assigned Judge and the Commissioner as they
20 assemble the record for the Commission.

21 Should the facts justify sanctions,
22 I will support the Judge and the Commissioner
23 in their recommendations to the Commission
24 and encourage a penalty proportionate to the
25 severity of the facts in this particular
26 instance.

27 I thank Judge Bushey and
28 Commissioner Florio for inviting me today,

1 and I am very much looking forward to hearing
2 why this filing was done in this manner.

3 Thank you.

4 ALJ BUSHEY: Thank you, Judge Clopton.

5 Next, a statement from the City of
6 San Bruno. Miss Strottman?

7 MR. MEYERS: Actually, I'm Steven
8 Meyers. I'm representing the City of San
9 Bruno. Miss Strottman is with me today.
10 I'll be making the opening statement.

11 Thank you, Judge Clopton, for your
12 opening statement. Judge Bushey, Mr. Florio,
13 Sandoval and Ferron, thank you.

14 I recognize that the issue this
15 morning has to do exclusively with your rules
16 of procedure and in particular Rule 1.1
17 dealing with the ethics and practice before
18 this Commission.

19 The operative word for us in this
20 rule is the word "artifice." And if you'll
21 excuse a Google definition of "artifice,"
22 "artifice" is a cunning or clever device or
23 expedient, especially used to trick or
24 deceive others.

25 Every politician, every political
26 flack and PR representative knows that the
27 way to bury a bad story is to file it on
28 Friday afternoon; even better, you file it

1 before a three-day weekend; and, at best,
2 before a four-day weekend.

3 The artifice of this filing, this
4 errata, worked. When it was filed -- and we
5 are on the distribution list -- we missed it.
6 We didn't appreciate what it was. We didn't
7 understand it. It was only after you acted
8 that we went back and recognized the nature
9 of this filing. And it was indeed troubling
10 to us, very troubling, because at issue for
11 the last three years, almost to the date of
12 today, has been the efficacy of the PG&E
13 records system, the veracity of PG&E, and the
14 public's ability to rely upon their
15 representations. And that is sorely lacking.

16 I would like to just quote briefly
17 from a document which I'll reference in just
18 a second in terms of its Providence, but when
19 it talks about an organizational culture, an
20 ethical organizational culture, this quote I
21 think is especially revealing.

22 "When senior management is seen as
23 taking the high ethical road, it provides a
24 positive message to all employees.
25 Management's ethical climate and behavior can
26 be exemplified in the manner in which it
27 reacts to critical incidences; how it views
28 its employees' responsibility of ensuring

1 public safety; how it communicates changes to
2 employees; what it chooses to disclose to its
3 regulator; and how it views itself and its
4 primary responsibilities."

5 That is a direct quotation from the
6 CPSD investigation report filed in these
7 proceedings 1/12/2012, at page 149. And I
8 believe that, for us, represents the issue at
9 hand this morning.

10 We take no joy whatsoever in
11 criticizing the ethics of a professional
12 colleague, no matter how bitter they may be
13 in adversarial relationships. But it is
14 clear to me, having never practiced before
15 this Commission, that Pacific Gas & Electric
16 Company and its legal team regards this
17 building, this institution, this hearing room
18 as its sand box; and we, as intervenors, are
19 interlopers.

20 At one point in time during these
21 proceedings, PG&E's counsel has said to me
22 "We know how the Commission operates." It's
23 not a matter so much of ethics as it is
24 arrogance, and I think that that is the
25 crucial factor here.

26 We believe that PG&E should be made
27 to account for this. We believe that they
28 have violated the rules. And we believe that

1 it's more important for you to restore the
2 sanctity of these proceedings and for you to
3 enforce your rules because, with all due
4 deference and respect to all of you, the
5 Commission's reputation is at issue as well.
6 The Commission's oversight of PG&E is at
7 issue in these proceedings, its continued
8 devotion to public safety is at issue.

9 And so it's important that you
10 demonstrate to the public, and especially to
11 the victims of the San Bruno disaster, that
12 you have an absolute, unwavering commitment
13 to safety and to ensuring that PG&E does what
14 it said it's going to do. And if it doesn't
15 do what it says it's going to do, you punish
16 them for it. Thank you.

17 ALJ BUSHEY: Thank you.

18 Next up is PG&E. Miss Fiala, what
19 type of presentation do you propose to make
20 this morning?

21 MS. FIALA: Good morning,
22 Commissioners, your Honors. Marie Fiala,
23 representing Pacific Gas & Electric Company
24 solely for the purposes of this morning's
25 proceeding, not for the afternoon's
26 substantive hearing.

27 And we waive opening statement. We
28 would like to proceed by calling Mr. Joseph

1 Malkin to testify.

2 ALJ BUSHEY: And we'll do that in just
3 one minute. Mr. Malkin, of course, is the
4 attorney representing Pacific Gas & Electric
5 Company in this proceeding. I take it, from
6 you calling him as a witness, that Pacific
7 Gas & Electric Company is waiving
8 attorney-client privilege.

9 MS. FIALA: Your Honor, we are not
10 waiving attorney-client privilege. We
11 believe Mr. Malkin, who, as you will hear,
12 was the person responsible for making the
13 decision about how to caption the errata and
14 also can testify to the reasons for its
15 filing on July 3rd, can fully inform the
16 Commission, this Court, of the reasons for
17 those -- why those decisions were made
18 without implicating attorney-client
19 communications. But we are not waiving
20 privilege.]

21 ALJ BUSHEY: All right. So we will put
22 him on the stand, put him under oath. Then
23 to the extent there are any questions that
24 implicate attorney-client privilege, you will
25 need to raise that objection.

26 MS. FIALA: Yes, your Honor.

27 ALJ BUSHEY: Thank you.

28 Please call first witness.

1 MR. LONG: Yes. We call Mr. Joseph
2 Malkin.

3 JOSEPH M. MALKIN, called as a
4 witness by Pacific Gas and Electric
5 Company, having been sworn, testified
6 as follows:

6 ALJ BUSHEY: Please be seated. State
7 your full name for the record and spell your
8 last name.

9 THE WITNESS: Joseph M. Malkin,
10 M-a-l-k-i-n.

11 ALJ BUSHEY: Ms. Fiala.

12 DIRECT EXAMINATION

13 BY MS. FIALA:

14 Q Good morning, Mr. Malkin. Would
15 you state your business address, please.

16 A My business address is Orrick,
17 Harrington & Sutcliffe, 405 Howard Street,
18 San Francisco.

19 MS. FIALA: Your Honor, before
20 beginning my examination, I would like to
21 mark the first exhibit. May I approach?

22 ALJ BUSHEY: Yes, please.

23 We will mark it OSC-1.

24 MS. FIALA: Thank you.

25 (Exhibit No. OSC-1 was marked for
26 identification.)

27 ALJ BUSHEY: Please continue.

28 MS. FIALA: Q Mr. Malkin, do you have

1 a copy of OSC-1?

2 A I do.

3 Q Would you please identify it.

4 A This is the document that is the
5 subject of this proceeding. It is the errata
6 that we submitted for filing on July 3rd.

7 Q And would you, please, tell us what
8 your role was, if any, in creating OSC-1?

9 A I was the lead counsel for PG&E in
10 all of the San Bruno-related matters at the
11 Commission, including various pressure
12 restoration regulation filings. And in that
13 regard, it was my decision how we captioned
14 this document.

15 If I may add, in hindsight, ALJ
16 Bushey, I want to apologize to you, in
17 particular. We should have called you about
18 this, and it is my responsibility that we did
19 not do that. And certainly I hadn't had any
20 thought that this submission would cause the
21 kind of upset that it has. I hope I wouldn't
22 have make that mistake, but I certainly in
23 hindsight recognize that. I hope you will
24 accept my apology.

25 Q Mr. Malkin, let's go back and fill
26 in some background before we move on to
27 discussing the exhibit.

28 You are an attorney?

1 A Yes, I am.

2 Q And how long have you been
3 practicing law?

4 A I have been practicing law for 41
5 years.

6 Q And how long have you been in
7 practice before this Commission?

8 A For the last 28 years, since 1985.

9 Q How long have you represented PG&E
10 before the Commission?

11 A I first began representing PG&E in
12 1987.

13 Q You've already alluded to your role
14 in PG&E's response to the tragic San Bruno
15 accident, can you elaborate on your role in
16 PG&E's response overall?

17 A Yes. As I mentioned, I am the lead
18 counsel for PG&E on the matters at the
19 Commission relating to San Bruno, and that
20 includes the three pending OIIs. In
21 chronological order the Records OII, the
22 Classification OII and what we refer to as
23 the San Bruno OII. I have also been lead
24 counsel for PG&E on the pressure restoration
25 filings that resulted from the reductions in
26 pressure in the wake of this tragic accident.

27 There are probably some other
28 things that are escaping my mind right now.

1 Q Thank you.

2 You are specifically aware that in
3 October 2011 PG&E asked permission from this
4 Commission to increase the operating pressure
5 on three of its gas pipelines, correct?

6 A Yes.

7 Q Can you please tell us what your
8 role was in making that request?

9 A My role in connection with the
10 October 2011 request, again, was as lead
11 counsel overseeing it. Participating in
12 preparation of the pleading that we
13 submitted, including making sure that the
14 engineering certification by Mr. Johnson was
15 retained, that he had reviewed the materials.
16 And I was also the lawyer for the company who
17 presented the -- Mr. Johnson as our witness
18 at the hearing on that application.

19 Q And what action did the Commission
20 take in response to PG&E's request?

21 A In December of 2011 the Commission
22 issued Decision 11-12-048 essentially
23 approving that request and establishing the
24 maximum operating pressure with the three
25 lines involved in that application which were
26 Lines 101, 132A and 137.

27 Q Let's turn back to OSC-1. Was
28 OSC-1 filed with the Commission?

1 A It was not filed. It was submitted
2 for filing on July 3rd, and a little over a
3 month later it was rejected by the Docket
4 Office.

5 Q And what was the purpose of
6 creating OSC-1?

7 A The purpose of creating it was to
8 provide formal notice to the Commission and
9 all of the parties, particularly parties who
10 had participated in the pressure restoration
11 hearing which included the City of San Bruno,
12 TURN and the City and County of San
13 Francisco, literally all 200 plus individuals
14 and organizations on the service list, that
15 we had discovered errors for, in particular,
16 on Line 147 and one on Line 101 in the
17 supporting information that had been
18 submitted with that application back in 2011.

19 Q As we've noted, OSC-1 is entitled
20 "Errata." Would you please describe for the
21 Commission how the decision was made to call
22 the document "Errata"?

23 A Yes. This was, in my experience at
24 the Commission which as I've already
25 described goes back a long ways, this was a
26 completely unique situation where in 2011 we
27 had filed the supporting information. Two
28 months later, the Commission had ruled on it,

1 had a final decision. And now the company
2 had discovered that certain pieces of
3 information that we had submitted were
4 erroneous. There was no question we had to
5 bring that to the attention of the Commission
6 and the parties.

7 In my view, looking at the Rules of
8 Practice and Procedure, there wasn't anything
9 that fit this situation. An amendment wasn't
10 appropriate, because the proceeding was
11 closed, if you will.

12 ALJ Clopton this morning mentioned
13 a petition for modification. That is
14 certainly provided for in the rules. But as
15 I looked at the decision, Decision 11-12-048,
16 the ordering paragraphs to me were the
17 significant feature.

18 Normally when you file a petition
19 for modification it is because you need from
20 the Commission some authorization to do
21 something that was not contained in the
22 original decision. You file a petition for
23 modification, say the facts have changed, I
24 need to do this or that or the other thing.
25 Please modify the decision, give me that
26 authority.

27 Here we had already a decision that
28 had two pertinent ordering paragraphs. The

1 first one, Ordering Paragraph 1, said Pacific
2 Gas and Electric Company may operate natural
3 gas transmission Lines 101, 132A and 147,
4 with associated shorts, with a maximum
5 operating pressure of 365 points per square
6 inch gauge. So it was an authorization to
7 operate those lines up to that level.

8 But as the second ordering
9 paragraph made clear, this was not an
10 override of the normal rules embodied in the
11 federal code and this Commission's General
12 Order 112-E. As paragraph 2 says, Pacific
13 Gas and Electric Company must operate Lines
14 101, 132A and 147 in accord with applicable
15 state and federal law and regulations.

16 So as I looked at it, the first
17 ordering paragraph was not a mandate to
18 operate at 365. So we had to come back to
19 the Commission and say please authorize us to
20 operate less than 365. It was an
21 authorization to go up that high, but with
22 the company free to go below it for
23 operational reasons. And secondly, with a
24 clear mandate in the Ordering Paragraph 2,
25 that notwithstanding that 365 psig
26 authorization, if state or federal law called
27 for something different that was not a get
28 out of jail free card. You had to apply and

1 comply with the law.

2 And when the company discovered
3 these errors and went through the analysis
4 that is described in Mr. Johnston's verified
5 statement, the conclusion that was reached
6 was that the Maximum Allowable Operating
7 Pressure on Line 101 and Line 147 had to be
8 reduced to comply with the federal code. So
9 that was completely consistent with what the
10 decision authorized.

11 So in my judgment, we didn't need
12 to have the decision modified. An amendment
13 is appropriate, but clearly we have to
14 provide notice to the Commission and to the
15 parties. Because I knew the thing that was
16 going to be of most significance to everybody
17 is what we are doing this afternoon. It is
18 looking at the state of PG&E's MAOP
19 validation efforts, its records and the
20 safety of the system.

21 And I thought -- to me, I have seen
22 errata used for a variety of circumstances at
23 the Commission some, as ALJ Clopton described
24 this morning, typos. I've also seen it used
25 in rate cases to change numbers. And as we
26 all know, in rate cases there is hardly
27 anything that is more substantive than a
28 number. There wasn't anything that exactly

1 fit. To me, errata is literally a list of
2 errors and corrections, and that is exactly
3 what we submitted.

4 As I say, with the benefit of
5 hindsight, a call to ALJ Bushey might well
6 have led to some different hybrid procedural
7 vehicle. But the choice I made was based on
8 the absence of anything clearly dictating a
9 path the need to provide notice to the
10 Commission and the parties, and a desire to
11 do so in a way that made it clear we have
12 errors. And nothing to me is better than
13 errata.

14 Q Mr. Malkin, who made the decision
15 about what to call OSC-1?

16 A As lead counsel, I did. This was
17 not something the business -- as far as I
18 even thought about, but it was purely a legal
19 call, and it was the call I made as the lead
20 counsel for the reasons that I just outlined.

21 Q I notice that you didn't sign
22 OSC-1. Can you explain why?

23 A Yes. For the first time in a long
24 time I was actually on vacation out of the
25 country.

26 Q As we've noted, OSC-1 was filed on
27 July 3rd. Please explain for the Commission
28 why it was filed on that date?

1 A As is set forth in Mr. Johnson's
2 verified statement, he describes the
3 discovery of the errors on Line 147 and how
4 that led then to a reassessment, if you will,
5 of the so-called "one class out rule," which
6 would have allowed these various pipelines to
7 operate as they were because of the hydro
8 test.]

9 And part of that initial review of
10 that issue identified a similar potential
11 issue with a segment of Line 131, which was
12 the subject of one of our other pressure
13 restoration applications. And as Mr. Johnson
14 describes, it was not until July 2nd that the
15 gas organization was able to finally resolve
16 that issue and determine that there wasn't
17 the same issue on Line 131.

18 We then went ahead and filed as
19 quickly as we could, frankly, without any
20 thought on my part that this was going to be
21 July 3rd before the July 4th holiday, and
22 maybe that's because I was out of the country
23 and going to celebrate July 4th. But it was
24 entirely because that's when we got it done,
25 and we felt we should file, I felt we should
26 file as quickly as we could once we had
27 everything nailed down.

28 Q I take it even though you were out

1 of the country that you were in communication
2 with other members of the legal team around
3 this filing?

4 A Yes. As my wife could testify,
5 even when I'm on vacation I am plugged in.
6 And so I was reviewing drafts on my e-mail,
7 and I'm in touch by e-mail. So I knew what
8 was going on even though I was multiple time
9 zones away and not physically in San
10 Francisco.

11 Q Did you believe that by filing
12 OSC-1 on July 3rd the fact of the filing or
13 its content might escape the Commission's
14 attention or the public's notice?

15 A No, I certainly didn't. I mean as
16 I said, I really didn't even give a thought
17 to the fact that it was going to be the day
18 before July 4th. I think if I had, I still
19 wouldn't have felt like this would be seen as
20 varying it. Despite what Mr. Myers said this
21 morning, my experience on all of the San
22 Bruno-related matters is there is nothing I
23 can say, there is no pleading that we can
24 file that does not get parsed for every word
25 in what it literally says, what the hidden
26 meaning is. And it never dawned on me that
27 whatever we called it, whenever we filed it,
28 that something coming from PG&E would escape

1 the scrutiny of particularly those parties
2 who had been most active in the OIIs, and
3 that includes everybody sitting at counsel
4 table there and some others who are in the
5 audience.

6 MS. FIALA: Your Honor, I'd like to
7 mark a second exhibit if I may.

8 ALJ BUSHEY: Come forward. What is it?

9 MS. FIALA: This is a document entitled
10 Certificate of Service for the errata that is
11 OSC-1.

12 ALJ BUSHEY: Make it OSC-2.

13 MS. FIALA: Thank you.

14 (Exhibit No. OSC-2 was marked for
15 identification.)

16 ALJ BUSHEY: Please continue, Ms.
17 Fiala.

18 MS. FIALA: Q Mr. Malkin, do you have
19 a copy of OSC-2?

20 A Yes, I do.

21 Q Please identify it for us.

22 A This is the Certificate of Service
23 that accompanied the service and submission
24 for filing of the July 3rd errata.

25 Q Approximately how many parties are
26 on the service list?

27 A Well, I actually went through and
28 counted it after this came up, and my count

1 was, if I recall it correctly, 41 parties,
2 141 information only, and I want to say 30 or
3 so state service. And as I mentioned, the
4 list includes the lawyers for all of the
5 active parties in the three OIIs. And also,
6 as I say, at the hearing on pressure
7 restoration for Lines 101 and 132A and 147,
8 in addition to Commissioners Florio and
9 Sandoval and ALJ Bushey, the City of San
10 Bruno, TURN, and the City and County of San
11 Francisco all participated as did what was
12 then known as CPSD through one of its
13 engineers and its counsel.

14 Q Are there also members of the media
15 on the service list?

16 A There are. I saw I think it was
17 Associated Press and California Energy
18 Markets. There may well be others. I think
19 I saw another one, but I'm not finding it at
20 the moment.

21 Q Was the errata in fact served on
22 all of the parties and interested parties
23 listed on OSC-2?

24 A To the best of my knowledge, it
25 was. It was served by one of the secretaries
26 at PG&E who executed the certificate of
27 service. And in my experience both generally
28 and with this particular individual, when she

1 executes a certificate of service and sends
2 it out, it goes out. I know I -- I got a
3 service copy of it.

4 Q Had PG&E brought the information
5 that's contained in the errata to the
6 Commission's attention before July 3rd, 2013?

7 A Yes. As Mr. Johnson states in his
8 verified statement, in February the company
9 set up a meeting with a member of the Safety
10 Enforcement Division to talk about among
11 other things the one class out issue that's
12 part of this errata and then on March 20th
13 had a conference call with that individual
14 and during the course of that call sent him
15 materials that are attached to Mr. Johnson's
16 statement that outlines what at that time
17 were the segments that the company was
18 looking at, which included the four segments
19 on Line 147, the segment on Line 101, those
20 all being the ones that were the subject of
21 the errata, and the additional segment of
22 Line 131 that was finally determined not to
23 be an issue on July 2nd.

24 Q Did PG&E provide additional
25 documentary information after the call with
26 SED but before July 3rd, 2013?

27 A Yes. Again, as set forth in Mr.
28 Johnson's verified statement, the company

1 provided follow-up information to SED in May
2 and as I recall on two separate occasions,
3 two separate dates in the first part of May,
4 following up on the conversation that had
5 been held in March and relating specifically
6 to Lines 147 and 101, I think 131 as well at
7 that time.

8 Q Mr. Malkin, did you at any time in
9 connection with the preparation, the titling,
10 or the filing of the errata intend to mislead
11 the Commission, the parties, or the public?

12 A Absolutely not. As I said, I was
13 trying to find a vehicle that would satisfy
14 what I felt was our absolute obligation to
15 bring to the attention of the Commission and
16 the parties the fact that we have discovered
17 errors. Notwithstanding that the Commission
18 had issued a decision, notwithstanding that
19 in my judgment that decision did not need to
20 be modified, I felt we had an obligation to
21 alert the Commission and the parties to the
22 errors and the corrections, and that was what
23 we were trying to accomplish by filing this.

24 Q And in hindsight, given where we
25 are today, would you have done anything
26 differently?

27 A In hindsight I sure would have. I
28 think I would have called ALJ Bushey and had

1 a procedural conversation to try to find a
2 vehicle that would have avoided creating the
3 impression that obviously was formed, for
4 which I have to bear responsibility, that we
5 were trying to do something sneaky. And
6 certainly had we learned from this
7 experience, I would have done that.

8 I thought ever since Commissioner
9 Florio first commented on this issue and then
10 when we got the OSC, would I have done that
11 had I not been on vacation? And, you know, I
12 can't answer that. I mean I did -- despite
13 the fact that I was always plugged in and on
14 my e-mails, I did try to respect my time with
15 my wife some at least. And I was definitely
16 trying to avoid being on the phone during
17 that period. But I can't undo it. But I can
18 tell you for sure, if I had it to do all over
19 again, I would do it differently.

20 MS. FIALA: Thank you, Mr. Malkin.

21 Your Honor, we have no more
22 questions at this time.

23 ALJ BUSHEY: Thank you, Ms. Fiala.

24 Do any parties have
25 cross-examination for the witness? If so,
26 please raise your hand. I see one, two,
27 three. Any one else? Three parties.

28 Approximate duration starting with

1 Mr. Long?

2 MR. LONG: Depending on answers, 20
3 minutes to a half hour.

4 MR. GRUEN: Depending on answers, your
5 Honor, 10 or 15 minutes.

6 ALJ BUSHEY: Okay.

7 MS. STROTTMAN: About 15 minutes.

8 ALJ BUSHEY: Okay. Let's start. Let's
9 go right into it, and we'll proceed hopefully
10 expeditiously here.

11 Mr. Long, please begin.

12 MR. LONG: Okay. Thank you.

13 CROSS-EXAMINATION

14 BY MR. LONG:

15 Q Good morning, Mr. Malkin.

16 A Good morning.

17 Q I wanted to ask you some questions
18 about OSC-1.

19 UNIDENTIFIED SPEAKER: Microphone,
20 please.

21 MR. LONG: And I've turned on the
22 microphone now. Hopefully everybody can hear
23 me.

24 CHIEF ALJ CLOPTON: Can you bring it
25 closer to you.

26 MR. LONG: Sure.

27 Q Ordinarily I'd like to have an
28 opportunity to prepare my questions in

1 advance. As you know, Mr. Malkin, I try to
2 be well prepared for hearings. And so I will
3 be working under a little bit of a
4 disadvantage not knowing exactly what you
5 were going to say or even that you would be a
6 witness, but please do bear with me, Mr.
7 Malkin and Commissioners and Chief ALJ
8 Clopton and Judge Bushey.

9 I'd like to ask you some questions
10 about this pleading that was filed on July
11 3rd. You stated, Mr. Malkin, that you were
12 responsible for the title of the pleading and
13 you take responsibility for that. Were you
14 responsible for the contents of the pleading?

15 A I am responsible, Mr. Long, in the
16 sense that as lead counsel I reviewed it. I
17 didn't write it. I did comment on it. And
18 at the end of the day I thought the content
19 was appropriate.

20 Q So I would like to ask you some
21 questions about the content of the pleading
22 and not just the title. And in particular,
23 I'd like to direct your attention to page 2
24 of the pleading. The first full sentence at
25 the top of that page begins, "During the
26 investigation and repair." Do you see that?

27 A I do.

28 Q Okay. And this is where the

1 pleading is discussing the fact that, as the
2 pleading says, during the investigation and
3 repair of a nonhazardous gas leak found
4 during a scheduled leak survey PG&E
5 determined that its records, its supposedly
6 validated records that showed the pipe as
7 having a DSAW seam weld were incorrect. Is
8 that what this -- that's what this pleading
9 is telling us?

10 A That's what it says.

11 Q Okay. Now, I don't see anything in
12 this pleading or at least in this sentence
13 that tells us the date of this investigation
14 and repair and a scheduled leak survey. Am I
15 right about that?

16 A You are.

17 Q Okay. Can you tell us why -- in
18 fact, the date that this occurred was October
19 2012, as we learned from the statement, the
20 verified statement of Mr. Johnson; isn't that
21 correct?

22 A That is correct.

23 Q Can you tell us why this pleading
24 does not include the fact that this discovery
25 was made eight to nine months prior to the
26 date of the pleading?

27 A For purposes of this pleading,
28 which was to provide notice to the Commission

1 and the parties that there were errors and
2 how they were corrected, that seems to me
3 like way too much information. It was -- as
4 I said, the purpose of this was to give
5 notice of the errors and the corrections.
6 And Mr. Johnson's statement sets forth in
7 detail as requested by the ruling issued by
8 Commissioner Florio and ALJ Bushey the entire
9 sequence of the leak, the subsequent
10 investigation, the overlay of the one class
11 out issue. For purposes of providing notice,
12 as we were trying to do, of the errors, it
13 didn't strike me that, I forget how many
14 pages it is in Mr. Johnson's statement now,
15 but it is multiple, multiple pages, when to
16 my mind the important fact was: We had
17 errors; here's the consequence.

18 Q Okay. So for eight to nine months
19 PG&E knew that information it had provided to
20 the Commission in order to establish the
21 operating procedure of certain lines was
22 incorrect. Am I right about that?

23 THE WITNESS: I must be --

24 MS. FIALA: Objection to --

25 THE WITNESS: -- completely precise
26 about that. There --

27 MS. FIALA: Mr. Malkin, may I just for
28 the record interpose an objection to the

1 extent that the answer would require you to
2 consider attorney-client communications.

3 THE WITNESS: I'm going to exclude
4 attorney-client communications.

5 ALJ BUSHEY: Well, let's back up for a
6 minute. If you're going to exclude them, you
7 need to disclose that there's something
8 you're excluding. Are you excluding
9 additional components to this subject of the
10 privilege? Don't tell us what they are,
11 but --

12 THE WITNESS: I understand that.

13 ALJ BUSHEY: -- are there components?
14 That's --

15 THE WITNESS: May I have the question
16 read back? Because I started to answer it in
17 the belief that I could answer it without
18 either disclosing or excluding privileged
19 communications, and specifically because of
20 the narrative that Mr. Johnson has provided.
21 But perhaps I need to listen to the question
22 again.

23 ALJ BUSHEY: Mr. Long, would you like
24 to restate your question?

25 MR. LONG: Well, ordinarily I would do
26 that because I would have my questions
27 prepared, but in this instance I would prefer
28 if the court reporter could read it back.

1 ALJ BUSHEY: Let's have the court
2 reporter read it back, could you, please.

3 (Record read)]

4 THE WITNESS: So, I believe I can
5 respond to that without either disclosing or
6 excluding privileged information. What I was
7 starting to say was, to be precise, was part
8 of the supporting information which consisted
9 of pressure tests on the entirety of the
10 lines that were subject to that application,
11 as well as the MAOP validation information.
12 All of that was part of our big filing.

13 But the other thing I would say is
14 that, as Mr. Johnson's statement discusses,
15 in fact, in February and March The Company
16 did disclose those issues to the Safety and
17 Enforcement Division.

18 MR. LONG: Q Now, Mr. Malkin, these
19 errors that Mr. Johnson states were
20 discovered not through some sort of -- well,
21 let me rephrase.

22 His errors were discovered by
23 happenstance; is that fair to say? I think
24 that's how it's put in one of the two OSC
25 rulings we're talking about today.

26 A Again, without either disclosing or
27 excluding privileged conversations, I would
28 not agree with that characterization for the

1 following reason: The error was discovered
2 as part of a routine systematic leak survey
3 process and the routine and systematic follow
4 up on that. And the substance of these
5 issues are really the subject of this
6 afternoon's hearing, when you'll not have a
7 lawyer testifying about these engineering
8 matters, but you'll have actual engineers
9 testifying about them.

10 And I would suggest that questions
11 along that line be addressed to the engineers
12 and not to the lawyer.

13 Q Well, just to be clear, my concerns
14 are in addition to the concerns stated in the
15 OSC, my concerns are about, as you can tell
16 from my questions, the fact that PG&E appears
17 to have known there was -- that it had
18 provided incorrect information to the
19 Commission many, many months before it
20 finally corrected that information in the
21 public record. And so I want to understand
22 why PG&E felt it was appropriate to do that.
23 And I just say that by way of preface, and
24 now I'll get to a question.

25 ALJ BUSHEY: Thank you, Mr. Long.

26 MR. LONG: Q You were counsel for PG&E
27 and continue to be counsel for PG&E in what's
28 known as the recordkeeping investigations?

1 A Yes.

2 Q For the record, that's I.11-02-016.
3 And in that recordkeeping investigation,
4 would it be fair at a very broad summary
5 level to state that one of the points that
6 PG&E wished to make was that whatever had
7 happened in the past with respect to its
8 records, PG&E was taking important measures
9 to address any recordkeeping failings going
10 forward and that the MAOP validation process
11 was one of those important measures.

12 Is that a fair summary of one of
13 PG&E's points in that proceeding?

14 A You know, Mr. Long, I don't think I
15 would express it exactly that way. I mean, I
16 think I really -- you're characterizing
17 probably 30 pages of briefs and a lot of
18 testimony in that. And as I sit here, I just
19 can't -- can't agree that that's a completely
20 concise, precise and accurate
21 characterization of our position.

22 Q All right. The record will speak
23 for itself on that. The pleadings, et
24 cetera, and the testimony will all speak to
25 that.

26 But let me ask you: Assuming that
27 the quality -- the fact of the MAOP
28 validation effort and the quality of that

1 effort was a significant issue in that
2 proceeding, isn't it fair to say that the
3 revelation that the MAOP -- the supposedly
4 validated data that was the result of that
5 process turned out to be incorrect on these
6 lines? Isn't that problematic to PG&E's
7 claim to the effort to show that the MAOP
8 validation process was improving
9 recordkeeping at PG&E?

10 A Well, with that question, I think
11 what you are doing is trying to engage with
12 me in a debate about the merits of some of
13 the issues in the recordkeeping OII. I guess
14 the way I would answer that is to say that
15 the Commission itself has recognized that
16 particularly historical records going back
17 decades -- in the case of line 147, it's more
18 than 50 years -- they're never going to be
19 perfect. And that's why the Commission,
20 while authorizing and in fact ordering PG&E
21 to continue with the MAOP validation, at the
22 same time said that The Company, like
23 SoCalGas and the other gas utilities in the
24 state, has to develop and embark on a plan to
25 strength test and replace that pipe for which
26 it does not have complete verifiable and
27 traceable records from prior strength
28 testing.

1 So with the MAOP validation
2 process -- in my view, as a lawyer, and in
3 terms of what we presented in the records
4 OII, and the way I view these issues in being
5 an advocate for The Company in front of this
6 Commission, the MAOP validation is important,
7 it is valuable, it is doing a great deal to
8 enhance the safety of the system. It is an
9 iterative process, an improving process, a
10 process that learns every time a pipe is
11 exposed, but it is not intended to be by the
12 Commission or by The Company a substitute for
13 the ultimate strength testing of all of the
14 pipe.

15 ALJ BUSHEY: Thank you, Mr. Malkin.
16 Mr. Long --

17 MR. LONG: I'm going to move on to a
18 different topic that specifically relates to
19 his cross-examination.

20 ALJ BUSHEY: That would be helpful.
21 And it would be helpful -- I know you haven't
22 had a chance to prepare your questions ahead
23 of time, but we need to focus on facts not
24 now in the record that need to be brought
25 into the record through cross-examination.
26 We have multiple stacks of briefs on all of
27 these opinions in these various proceedings.

28 So let's focus on facts.

1 MR. LONG: All right.

2 ALJ BUSHEY: Please begin, Mr. Long.

3 MR. LONG: Q All right. You in your
4 response to questions from counsel alluded to
5 the ordering paragraphs of Decision 11-12 --
6 I believe it's-048. Am I right about that?

7 A Yes.

8 Q And let's look at Ordering
9 Paragraph 1.

10 Do you have that in front of you?

11 A I do.

12 Q Okay. It says "Pacific Gas &
13 Electric Company may operate natural gas
14 transmission lines 101, 132A and 147 with
15 associated shorts with a maximum operating
16 pressure of 365 pounds per square inch
17 gauge."

18 Did I read that correctly?

19 A I wasn't following you word for
20 word, but it sounded like it was --

21 Q Okay. I tried to.

22 A -- what I read briefly.

23 Q My question to you, Mr. Malkin, is
24 do you have any doubt that if the correct
25 information had been provided to the
26 Commission originally regarding the -- the
27 information that you provided in your
28 July 3rd pleading had been provided

1 originally, that this ordering paragraph
2 would have read differently and would have
3 had lower maximum allowable -- maximum
4 operating pressure?

5 A I think if The Company had
6 submitted its supporting information and
7 asked for a maximum operating pressure of 330
8 on lines 101 and 147, instead of 365, I do
9 believe that that is the way that ordering
10 paragraph would have read. But I don't
11 believe that we needed to have that ordering
12 paragraph changed in order for The Company to
13 lawfully operate at 330.

14 Q I understand that's your
15 contention, but that wasn't my question.

16 My question was do you agree that
17 had you provided the corrected information in
18 your original filing, that Ordering Paragraph
19 1 would have had lower maximum operating
20 pressure levels?

21 A I think I just answered that.

22 Q And the answer was...

23 A The answer was that --

24 Q Can you give a yes or no, please?

25 A I'm always leery of your questions
26 in yes or no. If you repeat it, then I will
27 listen to it carefully with a yes or no in
28 mind.

1 Q Would you agree that if the
2 information -- the corrected information had
3 been provided in your original submission to
4 the Commission, that the maximum operating
5 pressure levels in Ordering Paragraph 1 would
6 have been lower?

7 A I think, yes, if The Company had
8 known that information at that time, it would
9 have asked for an MA -- a maximum operating
10 pressure of 330 on those lines instead of
11 365, at least for line 147. I'm not so sure
12 for line 101. I think that's a better
13 question to ask Mr. Johnson.

14 Q I just have one last line of
15 questions, and then I'll pass the baton to my
16 colleagues.

17 I want to go back to OSC 1, the
18 pleading filed on January 3rd -- excuse me,
19 July 3rd it was actually tendered for filing,
20 is the right phrasing.

21 And the second full paragraph on
22 the first page, I'll give you a moment to
23 turn to that.

24 A Yes.

25 Q The pleading states "The errors do
26 not raise a safety issue" --

27 A Yes.

28 Q " -- as each affected segment has

1 been successfully hydro tested to a pressure
2 that supports the prior MAOP."

3 Do you see that?

4 A I do see that.

5 Q And did you undertake any efforts
6 to ensure that this was accurate information?

7 A Well, the engineering information
8 that is contained in this document is not
9 information that the legal team created.
10 This is information that the legal team
11 obtained from the gas organization with which
12 we were working in preparation of this. And
13 so in that sense, yes, it came from
14 engineering personnel.

15 Q You do understand, because
16 you're -- I've seen you in action. You have
17 quite a mastery of the code of federal
18 regulation when it comes to establishing
19 Maximum Allowable Operating Pressure. Is
20 that fair to say?

21 A Flattery will get you everywhere.
22 Yes, I have mastery of that, to an extent.

23 Q All right. And so you understand,
24 then, that under the federal regulations, and
25 in particular I'm referring to Part 192,
26 Section 619, that maximum allowable operating
27 pressure is not determined just by reference
28 to the post construction pressure test, but

1 by the lower of that value and the design
2 pressure. You're aware of that; right?

3 A Yes, but 6.9 does not stand alone,
4 as I'm sure you, as someone who is also
5 master of these code sections, appreciates.

6 ALJ BUSHEY: Gentlemen, this mutual
7 admiration society here is getting a little
8 extensive.

9 Mr. Long, is there a particular
10 fact that you are trying to elicit from this
11 witness that does not relate to his mastery
12 or your mastery of various codes of federal
13 regulation?

14 MR. LONG: Let me ask. There is an
15 issue of who is responsible here for this
16 statement which we have concerns about.

17 Q And so I guess the question to you,
18 Mr. Malkin, is to the extent that this -- the
19 question of whether there are safety issues
20 involve legal interpretations of code of
21 federal regulation, do you stand behind this
22 statement, or are you -- or were you relying
23 on engineering determinations made by others
24 at PG&E?

25 A For opinions about pipeline safety,
26 I rely on the engineers at The Company. And
27 I think Mr. Johnson's verified statement
28 addresses that issue of safety. And

1 Mr. Johnson will be in this room this
2 afternoon testifying about that issue. And I
3 think any further questions you have about
4 safety are better addressed to him than they
5 are to me, as a lawyer.

6 Q Okay. So you're not taking
7 responsibility for this statement in this
8 pleading, then. Is that --

9 A I am taking responsibility for that
10 statement being in the pleading. I am not
11 taking responsibility for having personally
12 made that engineering judgment.

13 So anytime, as a lawyer, I submit
14 something to the Commission or to a court, I
15 take responsibility for having done -- made
16 sufficient inquiry to be comfortable that the
17 factual assertions are true. And that does
18 not involve my going back to school and
19 becoming -- getting an engineering degree and
20 independently expressing an opinion about it,
21 but it does involve talking to people who
22 have that expertise.

23 ALJ BUSHEY: Thank you, Mr. Malkin.

24 MR. LONG: That's all I have.

25 ALJ BUSHEY: Thank you, Mr. Long.

26 Moving the baton on down. Safety
27 and Enforcement?

28 MR. GRUEN: Thank you, Your Honor. My

1 name is Darryl Gruen, and I'm representing
2 the Safety and Enforcement Division as an
3 advocate and not in an advisory capacity in
4 this proceeding.

5 Good morning, Commissioners Florio,
6 Sandoval, Ferron, Chief Administrative Law
7 Judge Clopton and Administrative Law Judge
8 Bushey.

9 CROSS-EXAMINATION

10 BY MR. GRUEN:

11 Q Good morning, Mr. Malkin.

12 A Good morning, Mr. Gruen.

13 Q You mentioned in your testimony on
14 direct that Mr. Johnson's verified statement
15 had been served on the entire service list
16 for R.11-02-019; is that right?

17 A Actually, I didn't address the
18 service of Mr. Johnson's verified statement.
19 I was addressing the service of the errata.

20 Q I'm sorry. The errata. Thank you
21 for the clarification.

22 And that service list you mentioned
23 included the names and e-mail addresses of
24 all of the attorneys in the investigations,
25 according to your testimony; is that right?

26 A I think exactly what I said,
27 Mr. Gruen, was it included the attorneys for
28 all the parties. In the case of what was

1 then CPSD, and now SED, it has most of the
2 attorneys on the service list. It has you,
3 for example. It has Mr. Foss. It has
4 Jonathan Reiger, Harvey Morris. It does not
5 have Mr. Berdge.

6 ALJ BUSHEY: Mr. Malkin, I don't think
7 we need to read the service list.

8 Mr. Gruen, is there some particular
9 focus that you would like to --

10 MR. GRUEN: That was the clarification,
11 Your Honor, from his prior testimony that in
12 fact Mr. Berdge is not in fact included on
13 the list.

14 Q And in fact, would you agree,
15 Mr. Malkin, that Mr. Berdge is the lead
16 attorney for the class notification
17 investigation?

18 A Yes, Mr. Berdge is. And as you may
19 know, and I know he knows, we filed an errata
20 on the same day in the class location OII
21 because this "one class out" issue crossed
22 over both of those proceedings.

23 MR. GRUEN: That's an excellent segue
24 for my next point.

25 Your Honor, may I circulate an
26 exhibit?

27 ALJ BUSHEY: Yes, please. We will
28 label it OSC-3.

1 (Exhibit No. OSC-3 was marked for
2 identification.)

3 ALJ BUSHEY: We'll be off the record.

4 (Off the record.)

5 ALJ BUSHEY: All right. We'll be back
6 on the record.

7 Mr. Gruen, this is labeled as OSC-3.

8 MR. GRUEN: Thank you, Your Honor.

9 ALJ BUSHEY: I was going to identify
10 it. It is an Amendment to Pacific Gas &
11 Electric Company's Second Update to Response
12 to Order Instituting Investigation dated
13 July 3rd, 2013.

14 Please continue, Mr. Gruen.

15 MR. GRUEN: Thank you, Your Honor.

16 Q Mr. Malkin, do you recognize
17 Exhibit OSC-3 as the amendment that was --
18 that PG&E provided in Investigation
19 11-11-009?

20 A Yes.

21 Q Okay.

22 A We received an e-mail from the
23 docket office on August 2nd rejecting our
24 filing of the errata on July 3rd and telling
25 us to resubmit it as an amendment. And so we
26 did.

27 Q And so like the filing of an errata
28 on July 3rd in this proceeding, R.11-02-019,

1 PG&E also filed an errata in I.11-11-009; is
2 that right?

3 A Yes.

4 Q And both of those were on July 3rd?

5 A Correct.

6 Q And both of those were rejected by
7 the docket office; is that right?

8 A On different dates, yes, with the
9 one -- this one, as I said, the docket office
10 was very directive: This is rejected; refile
11 as an amendment.

12 If my memory serves me correctly,
13 the e-mail from the docket office said if you
14 do that, then the filing will relate back to
15 the date you first submitted it.

16 Q But here you opted to pursue an
17 amendment. But if I understood your
18 testimony correctly for this proceeding, you
19 said that an amendment was not the
20 appropriate procedural step to take in
21 R.11-02-019.

22 A Right. The docket office didn't
23 suggest otherwise for the reason that even
24 though I don't think an amendment literally
25 fits the rule in the class OII, that's still
26 an open proceeding. And so docket office
27 told us: Resubmit it as an amendment. And
28 we did.

1 In the case of the pressure
2 restoration filing, as I said before, it was
3 unique because the filing was back in 2011,
4 the Commission decision was in 2011. We
5 don't yet have a decision in the class OII,
6 as you know.

7 MR. GRUEN: Thank you.

8 No further questions, Your Honor.

9 ALJ BUSHEY: Thank you. Miss
10 Strottman?

11 MS. STROTTMAN: Thank you.

12 Good morning, Mr. Malkin. Good
13 morning, Commissioners. Good morning, ALJs.

14 THE WITNESS: Good morning, Miss
15 Strottman.

16 MS. STROTTMAN: Good morning.

17 CROSS-EXAMINATION

18 BY MS. STROTTMAN:

19 Q I'm going to ask you, Mr. Malkin, a
20 few questions to follow up on Mr. Long's
21 questions about timing. So PG&E discovered
22 that there was A.O. Smith pipe on line 147 on
23 October 24th, 2012; is that correct?

24 A You know, I mean, that is one of
25 the dates in Mr. Johnson's statement. I
26 mean, I think if you read his whole
27 narrative, you could say the discovery was
28 actually made somewhat earlier than that --

1 Q Okay.

2 A -- but it was confirmed by another
3 engineer on that date.

4 Q Okay. So approximately what date
5 did PG&E discover that it had the wrong
6 record for the pipe on line 147?

7 A Well, I -- if you -- you know,
8 that's in Mr. Johnson's statement. As I
9 recall, it was October 15th, he says, that an
10 engineer went out, looked at the pipe, and
11 who was familiar with what the record showed,
12 and noted at that time that the pipe appeared
13 to be of the A.O. Smith variety, where the
14 records said it was DSAW.

15 Q Okay. And then approximately four
16 months later, then, PG&E reported this fact
17 to CPSD; is that correct?

18 A You can do the math. I mean,
19 referring to the February, March time period.

20 Q Yes.

21 A Yes, according to what Mr. Johnson
22 has said.

23 Q And CPSD -- and, for the record, of
24 course, is Consumer Protection Safety
25 Division, which is now called the Safety
26 Enforcement Division -- for lack of better
27 words is the police officer that PG&E has to
28 report violations, issues, et cetera, to

1 within the CPUC; is that a fair statement?

2 A I wouldn't characterize it that
3 way. I mean it's Safety and Enforcement
4 Division, with "safety" being the first word
5 and I think the first element of the mission
6 of that division. And so it does do
7 enforcement as well. But I think, as I said,
8 I think the first order of business for the
9 Safety and Enforcement Division is safety.

10 Q But if there is an issue with
11 public safety with one of your pipelines,
12 don't you report that to CPSD?

13 A Well, SED. Yes, safety. And as
14 the orders to show cause recite, the Safety
15 and Enforcement Division was consulted before
16 these orders to show cause were issued and
17 confirmed that there isn't a safety issue.

18 Q But either way, PG&E waited for
19 four months to contact SED to inform them of
20 these safety violations; isn't that correct?

21 A The -- if you are -- I think those
22 are questions better directed to Mr. Johnson,
23 whose statement this information is derived
24 from.

25 Q Okay. So that's fine. But isn't
26 it true, though, then, that you, as a
27 representative and counsel for PG&E, waited
28 until July of 2013 to file an errata to

1 inform the Commissioners, San Bruno and the
2 other intervenors, that there are two public
3 safety issues with PG&E's pipelines?

4 A Well, first of all, let me say that
5 as the Safety and Enforcement Division said
6 and Mr. Johnson's verified statement also
7 says, there is no safety issue and there
8 never was.

9 Secondly, to the extent your
10 question is attempting to ask me in essence
11 about what I knew and when I knew it, that --
12 all of that information, other than -- well,
13 all of that, that information, what I knew
14 and when I knew it, is all derived from
15 attorney-client communications.

16 Q Well, then, I guess I'm confused
17 about how we can assess the penalty for
18 sanctions here. I feel like PG&E is using
19 this attorney-client privilege as a sword and
20 a shield. You're using it when it helps you,
21 and then you want to -- I'm sorry. You're
22 waiving it when it helps PG&E, and then
23 you're using it to protect PG&E. So...

24 A I would take issue with that.

25 MS. FIALA: Mr. Malkin -- I think this
26 is the point where I should interject.
27 First, that we have not waived privilege
28 either intentionally, by design, certainly

1 not to use it as a sword. All of the
2 information on which Mr. Malkin has relied in
3 giving his answers, as it relates to
4 information known to The Company, is
5 contained in Mr. Johnson's statement, and he
6 has not referenced any attorney-client
7 information other than that.

8 I also observe that this line of
9 questioning seems to be far afield from the
10 subject of the order to show cause that we
11 are addressing in this morning's hearing, and
12 it seems to be encroaching into the subject
13 matters to be addressed this afternoon. And
14 it seems an inefficient use of the
15 Commission's time to ask Mr. Malkin to delve
16 into public safety issues that are, as he has
17 said, not his area of expertise.

18 MS. STROTTMAN: Your Honor, I'm sorry,
19 may I respond to that?

20 ALJ BUSHEY: Well, Miss Strottman,
21 let's just back up for one minute. It's not
22 possible that Mr. Malkin could have known
23 about this before Mr. Johnson knew about it.
24 So let's take that date and assume that's the
25 date that he knew. We don't have to go into
26 attorney-client privilege on that. That gets
27 you the facts I think that you need to make
28 the argument you want to make.

1 Is that sufficient?

2 MS. STROTTMAN: Yes. Thank you. Thank
3 you.]

4 So just to follow up on ALJ
5 Bushey's statement right there, so when did
6 you know then, Mr. Malkin, of these errors?

7 ALJ BUSHEY: Stop. We are going right
8 back. We are going to work with the
9 assumption he knew when Johnson knew so that
10 we don't have to get into it.

11 MS. STROTTMAN: Okay, thank you.

12 Q Isn't it correct that the record
13 for Segment 180 Line 132 that exploded in San
14 Bruno, isn't it true that that record for
15 that piece of pipe was wrong?

16 A Yes.

17 Q Thank you.

18 So PG&E discovered, once again,
19 that it had the wrong record for pipe in the
20 neighboring city to San Bruno. Isn't that
21 correct?

22 A (Pause in the proceeding.)

23 The reason I'm pausing is because
24 in the case of San Bruno Line 132 Segment 18,
25 it was the underlying historical record that
26 was incorrect.

27 In the errors, for errors on Line
28 147 that we reported in the errata, the error

1 was not in the underlying records but in the
2 MAOP validation that took place in 2011. So
3 they are different.

4 Q But either way, isn't it true that
5 PG&E had bad data for a line in a neighboring
6 city to San Bruno and discovered this in
7 October of 2012?

8 A I'm not sure I can answer that in
9 terms of what constitutes "bad data." That
10 really to me is more an engineering question
11 than it is a legal question, and it is not
12 one that I feel competent to comment on
13 beyond the fact that the errors, we called
14 them "errors." We filed errata to identify
15 them as errors, and that is the
16 characterization I certainly agree with.

17 Q But either way, the record for Line
18 147 that you described in your errata, that
19 record pre-October 2012 was the wrong record
20 for Line 147?

21 A There was erroneous entry in the
22 what is called the pipeline features list
23 derived from the MAOP validation process.

24 Q But Mr. Malkin, isn't it true that
25 PG&E had the wrong data for Line 147, and
26 that is the whole reason for this errata that
27 you filed in July of 2013?

28 A No. The reason for the errata,

1 Ms. Strottman, is that as part of the
2 supporting information, in addition to the
3 pressure test information for the pressure
4 restoration for Line 147, we had submitted
5 the pipeline features list and the
6 information in that pipeline features list
7 that had been derived from MAOP validation
8 done in 2011.

9 What the company subsequently
10 discovered was that, as described in
11 Mr. Johnson's verified statement, the
12 engineer doing that had made an error. And
13 as a result the -- for certain segments of
14 that pipeline features list that was
15 submitted to the Commission contained errors.

16 Q And isn't it true that line -- that
17 there was an error related to Line 101,
18 correct? However way you want to describe
19 it.

20 A There was an error relating to Line
21 101 in the way the company had applied the
22 "one class out" rule under the federal code.
23 There was not -- it is a different kind of
24 error than the error on Line 147 which
25 involved pipe specification.

26 Q Doesn't Line 101 run through San
27 Bruno?

28 A Parts of it do, not the part that

1 had this issue. Line 101 does run through
2 San Bruno.

3 Again, I don't want to -- I feel
4 like you are asking me a series of
5 engineering questions, which I'm happy to
6 answer as much as I can. But I'm not sure it
7 is productive as asking those same questions
8 of Mr. Johnson and Mr. Singh this afternoon.

9 Q My line of questioning has to go to
10 your and PG&E's ethical duties of recording
11 issues to the Commission. Especially an
12 issue that was similar to what occurred in
13 San Bruno, what was the exact root cause of
14 what happened in San Bruno, which is the
15 wrong record for a piece of pipe.

16 So didn't it raise a question in
17 your mind when you found out about these two
18 errors that you should have raised this?
19 That it is a significant issue that should
20 have been raised in front of the CPUC to the
21 City of San Bruno, to CPSD and the
22 intervenors?

23 A Let me answer that starting with it
24 was brought to the attention of Safety and
25 Enforcement Division by the company's
26 engineers.

27 From the standpoint of me as a
28 lawyer, I look at the information. And again

1 I'm not going to disclose or delve into
2 anything that was derived from privileged
3 conversations with my client, but I will
4 refer you to publicly available information.
5 You have Mr. Johnson's verified statement.
6 You have the recitation in the orders to show
7 cause that the Safety and Enforcement
8 Division, like Mr. Johnson, there is no
9 public safety issue.

10 So the -- I understand that you may
11 think there is an analogy between this Line
12 147 issue and San Bruno. The one huge
13 difference, and I think in a line Mr. Johnson
14 has recited in his verified statement and in
15 the mind of Safety and Enforcement Division
16 set forth in orders to show cause, the huge
17 difference that made this not a safety issue
18 is there is a complete, verified, traceable
19 record of a 2011 strength test on Line 147 to
20 pressures well above the 365 that had been
21 authorized, or 300 that it was operating at.
22 And, therefore, there is an MAOP validation
23 error, but no public safety issue.

24 Q But how can we have confidence in
25 your system if we keep finding errors?

26 A Excuse me?

27 Q How can we have confidence in your
28 system if you keep finding errors?

1 A I think that is a question that the
2 engineers can answer directly. I don't know.
3 I'm happy as a lawyer to give you my take on
4 it.

5 ALJ BUSHEY: Mr. Malkin, we have had
6 plenty of your take this morning.

7 Ms. Strottman, do you have any
8 questions that go to the attempted filing of
9 this errata?

10 MS. STROTTMAN: Yes, I do. I'm sorry,
11 ALJ Bushey.

12 Q I still feel like Mr. Malkin didn't
13 answer my question as to whether -- you have
14 a situation here where you have a bad record
15 for piece of pipe in a neighboring city to
16 San Bruno. Did that raise a flag in your
17 mind that that is something significant that
18 you should have reported to San Bruno,
19 whether you had time to investigate it or
20 not, to San Bruno and to the Commission and
21 to CPSD?

22 A I don't think I can answer that
23 question without disclosing privileged
24 communications, because you may be making
25 assumptions about what I knew and when I knew
26 it. That may or may not be true. And I
27 can't give you an answer without telling you
28 what I knew and when I knew it, which all

1 came from privilege.

2 ALJ BUSHEY: Let's call it privileged.

3 Ms. Strottman, you have a question?

4 MS. STROTTMAN: Thank you. I have a
5 few more questions.

6 Q So as we have been discussing
7 through this cross-examination, whatever way
8 you want to characterize it, there are errors
9 with Line 147 and 101 that have to do with
10 improper reporting of pressure testing and
11 with potentially bad data for a record. Why
12 weren't these issues brought to light in the
13 recordkeeping and root cause OIIs when it
14 seems like those issues go to the very heart
15 of the matter of what the OIIs are looking
16 at?

17 A Again, I don't think I can answer
18 that without disclosing privilege
19 communications as to what I knew and when I
20 knew it.

21 ALJ BUSHEY: Thank you.

22 MS. STROTTMAN: Once again, your Honor.
23 I'm sorry. I would just like to know that
24 they are using the attorney-client privilege
25 as a sword and shield.

26 Q So, I'm sorry, I didn't really
27 understand the answer to Mr. Long's question
28 about why you filed this errata to July 3rd.

1 So it was because you were on vacation? I'm
2 sorry.

3 A No.

4 Q I know that you have associates and
5 people that can do that for you.

6 A I do have a lot of support,
7 fortunately.

8 But it got filed on July 3rd,
9 because it was July 2nd, as we cited in
10 Mr. Johnson's verified statement, that the
11 gas organization finally resolved the open
12 issue about whether there was a "one class
13 out" issue on Line 131 which also is the
14 subject of a pressure restoration filing.

15 ALJ BUSHEY: Just to keep the record
16 clear, the document presented to the
17 Commission on July 3rd was not in fact filed.
18 It was presented, but rejected. So when we
19 are talking about OSC-1, what has been
20 labelled OSC-1, the errata that was proffered
21 to the Commission, it was rejected. Let's
22 just be clear. That is why we need to, in
23 order to get into the record, we need to
24 label it as OSC-1 because it is not now in
25 the record of this proceeding.

26 MS. STROTTMAN: Yes, thank you. I'm
27 sorry about that. Thank you for clarifying
28 that.

1 Q Mr. Malkin, how long have you
2 practiced in front of the PUC?

3 A Twenty-eight years.

4 Q What percentage of your practice
5 focuses on CPUC matters?

6 A Calculating, 10.

7 ALJ BUSHEY: Mr. Malkin, to the nearest
8 10 percent, a number.

9 THE WITNESS: I would say over that 28
10 year period, 40 percent, 100 percent the last
11 three years.

12 MS. STROTTMAN: Q I understand that.
13 And you've filed erratas in the
14 past. Isn't that true?

15 A I'm pretty sure.

16 Q About how many?

17 A I couldn't possibly tell you.

18 Q For what reasons have you filed
19 erratas in the past?

20 A I know that in proceedings I've
21 been involved in we have filed errata to
22 correct a variety of errors including, as I
23 mentioned before, numbers that sometimes are
24 fairly significant differences, other
25 mistaken information. I can't be any more
26 precise.

27 Q You mostly filed them to fix
28 numbers, typographical minor errors. Isn't

1 that true?

2 A Actually, I don't believe it is my
3 practice to file errata for minor
4 typographical errors, frankly. I mean it is
5 not -- in fact, the rules specifically say
6 that minor corrections that are not
7 substantive don't get filed. So I wouldn't
8 personally tend to submit errata for things
9 like that.

10 Q But you know what the purpose of an
11 errata is even though you don't file them?

12 A The purpose of an errata to me,
13 Ms. Strottman, is to convey a list of errors
14 and corrections.

15 MS. STROTTMAN: Thank you, Mr. Malkin.
16 I have nothing further.

17 ALJ BUSHEY: Thank you.

18 Ms. Fiala, how much redirect do you
19 have at this point?

20 MS. FIALA: Two questions.

21 ALJ BUSHEY: Hold on to that.

22 Chief Judge Clopton, do you have any
23 questions for the witness?

24 EXAMINATION

25 BY ALJ CLOPTON:

26 Q The only question that I had is the
27 characterization, has to do with
28 characterization. My only question goes to

1 the characterization. Because, as I pointed
2 out in my remarks, there is no such thing as
3 filing an errata. And as you pointed out,
4 this was completely unique because it was
5 post-decision.

6 While I appreciate the apology that
7 you made earlier in your testimony, I would
8 like to ask you about how you generally
9 proceed when you are filing in our Docket
10 Office. Because our Docket Office is very
11 diligent about reviewing every document that
12 is filed. It is part of why we have a queue.

13 So what has been your practice in
14 clarifying how to file under our rules?

15 A I guess I would have to say, ALJ
16 Clopton, that I'm probably not as personally
17 focused on that as perhaps, in hindsight, I
18 should be.

19 I file for a variety of things.
20 For example, the original document that
21 kicked off this pressure restoration has got
22 a title that also doesn't fit anywhere. It
23 is not an application. It is entitled
24 Pacific Gas and Electric Company's Supporting
25 Information for Lifting Operating Pressure
26 Restrictions on Line 101, 123A and 147, which
27 also doesn't fit. And the Docket Office took
28 it, and they took it for filing probably

1 because ALJ Bushey told them this was how we
2 were doing it.

3 So that is perhaps a long way of
4 saying that I have not personally had a lot
5 of contact with the Docket Office probably
6 because I generally have more junior lawyers
7 working with me. They are the ones who have
8 those communications.

9 And in this case, as you say
10 because the Docket Office does do such a
11 thorough review, it took quite a while for
12 them to get around to it, bouncing it back.
13 And we didn't have a conversation with Docket
14 Office about it.

15 Q Because it isn't a filed document,
16 I do want to reiterate Judge Bushey's earlier
17 comment that because it is not filed and it
18 isn't -- there is no such thing as an errata
19 procedure under our rules, that everyone
20 refer to the document that has been submitted
21 today and that is under deliberation today as
22 OSC Exhibit 1. Thank you.

23 ALJ BUSHEY: Thank you, Chief Judge
24 Clopton.

25 Do any of the commissioners have
26 questions for the witness? Commissioner
27 Sandoval.

28 COMMISSIONER SANDOVAL: Thank you very

1 much.

2 EXAMINATION

3 BY COMMISSIONER SANDOVAL:

4 Q Thank you very much for being here.
5 We appreciate that.

6 I have a couple of questions. So
7 getting back to the issue about the leak
8 status of -- without getting into the
9 attorney-client privilege, I just want to be
10 clear on the timeline here.

11 When did you become aware of, I
12 think "leak status" is the wrong word, when
13 did you become aware of the discrepancy
14 between the pipeline status and what had been
15 represented as the pipeline status for
16 purposes of establishing operating pressure?

17 A Are you asking when did I
18 personally?

19 Q Yes. Without invoking
20 attorney-client privilege, when you did
21 become aware?

22 A I guess, Commissioner Sandoval, I
23 don't know how to answer that without
24 disclosing privilege communications, because
25 I only learned about it from my client.

26 Q I'm trying to get back to the
27 question that was asked earlier by the
28 attorney for San Bruno. She was asking about

1 is there a discrepancy between when the
2 lawyers knew about this and when it was filed
3 both with the Commission and made available
4 to the service list. So I'm still trying to
5 establish what those dates are.

6 So without invoking privilege, can
7 you give me some markers for, you know, did
8 you speak -- how about this, let's try this.
9 Did you speak to Safety and Enforcement
10 Division about the discrepancies in the
11 pipeline characteristics shortly after you
12 became aware of them?

13 A I personally had no conversations
14 with Safety and Enforcement Division.
15 Members of PG&E's gas group did have
16 conversations, as recited in Mr. Johnson's
17 verified statement.

18 Q And do you have any sense about
19 what the timing was about how long it took
20 between the discovery of these discrepancies
21 and those conversations?

22 A Well, what I know from
23 Mr. Johnson's statement is the -- with
24 respect to the first error that was
25 discovered on Line 147 that was discovered
26 in, let's say, the second half of October
27 2012. The first contact with Safety and
28 Enforcement Division that Mr. Johnson

1 mentions occurred in February with a
2 substantive conversation on March 20th.

3 Q Okay, from Line 101?

4 A I believe discovery of the issue
5 with respect to Line 101 was later. That
6 was -- as Mr. Johnson described in his
7 statement, what happened was first the
8 company discovered that there was an error in
9 the MAOP validation because of the pressure
10 test under the interpretation of the "one
11 class out" rule that the company was using at
12 the time. While the specifications were
13 changed, the line could continue to operate
14 at 365 psig because it had 2011 pressure
15 test, a high enough level to allow it to
16 operate one class out.

17 As the investigation of those
18 issues went on further, as Mr. Johnson
19 describes, the company began to focus on the
20 "one class out" rule and interpretation.
21 Subsequently, in 2013, came to the
22 realization that the correct interpretation
23 of that rule precluded reliance on the 2011
24 pressure test to operate one class out.

25 That led to looking at the other
26 lines, including Line 101, and the discovery
27 that there was a segment on Line 101 that the
28 company thought was appropriately operating

1 one class out based on a 1989 strength test
2 that it could not rely on. And all of those
3 issues were a part of the communication with
4 the Safety and Enforcement Division on March
5 20th.

6 There is an attachment to
7 Mr. Johnson's statement the second page of
8 which is a table that identifies the
9 different pipelines and segments and issues
10 that were part of that discussion with Safety
11 and Enforcement Division.

12 Q So the timeline is roughly then, as
13 regards to Line 147, there were some
14 discoveries, discrepancies in recordkeeping
15 in October 2012. Line 101 the initial
16 discovery was in, I'm sorry, what month of
17 2013?

18 A You know, I don't remember that
19 Mr. Johnson's statement has a month. I can
20 look at it to see. I know it was prior to
21 the March 28th meeting, because Line 101 is
22 on the table that was sent to Safety and
23 Enforcement Division.

24 Q Okay. You don't need to take the
25 time to look at that now.

26 So we are talking about the
27 difference between initial discovery
28 somewhere around October 2012. And notice to

1 the service list, attempted notice to the
2 service list through the attempted filing of
3 the errata in July 2013. And then some time
4 prior to March of 2013 and then notice though
5 the service list in July is the differences
6 between discovery and notice to the service
7 list. Is that correct?

8 A I think -- yes. Initial discovery,
9 and then Mr. Johnson's cites the steps that
10 were taken. I think you have -- in terms of
11 those basic points along the timeline, I
12 would say that sounds accurate.

13 Q That is very helpful.

14 Two other questions, so these get
15 to OSC-1 and the representations in there.
16 So in addition to the characterization of it
17 as an errata, I want to focus on a couple of
18 the statements in here. This says in
19 paragraph 2 on page 1 "The errors do not
20 raise a safety issue, as each affected
21 segment has been successfully hydro tested to
22 a pressure that supports the prior to MAOP."

23 So I think this gets back to the
24 question that Mr. Long raised with regard to
25 the transportation code. I'm taking your
26 reference, Part 192 Section 619 indicates
27 that MAOP is not determined simply by
28 pressure testing but by other values, which

1 would also include things like the weld,
2 whether it is seamed or seamless, and thus
3 the joint efficiency factor.

4 So if we stipulate that that is a
5 correct citation as to the code, this reads
6 to me as a legal conclusion that says this
7 error doesn't raise a safety issue. That
8 this legal conclusion rests on the assertion
9 that the MAOP validation indicates that there
10 is no safety conclusion. But do you believe
11 that this adequately recognizes that the
12 legal standard refers to a second part which
13 is not simply the MAOP but to the
14 characteristics of the pipeline itself?

15 And that if what you are saying is
16 that you found that the facts turned out to
17 be different than you believe were true when
18 you filed the previous pleading with regard
19 to the pressure segment, I'm trying to
20 understand what is then the basis for this
21 legal conclusion that there is no safety
22 issue when the second half of the test, the
23 characteristics of the pipeline, that those
24 facts didn't turn out to be in accordance
25 with what you represented to this Commission
26 that there were?

27 A I would answer that with a couple
28 of thoughts. First, to my mind, Commissioner

1 Sandoval, the statement that the errors do
2 not raise a safety issue is not a legal
3 conclusion. It is an engineering conclusion.

4 Secondly, with respect to the legal
5 conclusion there is another code section that
6 is pertinent, and that is Section 192.611.
7 That is the so-called "one class out"
8 provision. And what that says is if there
9 has been a class location change in
10 satisfactory conditions and there has been a
11 pressure test for at least eight hours, that
12 you can operate a pipeline that changed from
13 Class 2 to Class 3 at the pressure levels
14 allowed for Class 2 to make that more
15 precise. In a Class 2 location, you can
16 operate up to 60 percent of SMYS.

17 So under the "one class out" rule
18 if you have a change from Class 2 to Class 3
19 and the pressure test can operate up to 60
20 percent, whereas normally Class 3 you would
21 be limited to 50 percent. So under the "one
22 class out" rule, if the timing sequence
23 between the class location change and the
24 pressure test had been right, then under the
25 code the pipe could have continued to operate
26 at the 365.

27 Now, again, as a lawyer, making a
28 quasi-engineering judgment, to me that says

1 the engineers at PHMSA who wrote those
2 regulations concluded as an engineering
3 matter that it was safe to operate pipes that
4 had that pressure test one class out.

5 As a matter of legal interpretation
6 as we report in OSC-1, the company concluded
7 that it couldn't do that notwithstanding
8 whatever engineering sense it might make. So
9 as an engineering matter, it is now a safety
10 issue, as I think the Safety and Enforcement
11 Division has concluded also in this case.
12 But as an interpretation of the code, that
13 could not continue, and that is why the
14 company reduced the MAOP on those segments of
15 Line 147 and 101.

16 Q So thank you for the explanation.

17 Although, I'm not going to debate
18 you, but I think that this does raise a legal
19 conclusion about whether or not the code has
20 been satisfied, that we can't characterize
21 this simply as an engineering conclusion.
22 Because while you do correctly cite the other
23 part of the code with regard to the pressure
24 test, I think it raises a question of whether
25 or not this statement that the errors do not
26 raise a safety issue adequately recognizes
27 the fact that the underlying facts did not
28 turn out to be as your records indicated.

1 And that, therefore, this Commission might
2 have to look at what was the basis for its
3 previous order.]

4 I think that that is not simply an
5 engineering issue, that that is a legal
6 conclusion. And so this is part of my, I am
7 troubled by this broad, "These errors do not
8 raise a safety issue," when what you're
9 really saying here is that the underlying
10 facts turned out to be different than we
11 represented to the Commission that they would
12 be in something which is material to both the
13 federal and the state laws. So.

14 A Right. I understand that. And I
15 think, Commissioner Sandoval --

16 ALJ BUSHEY: Mr. Malkin, I don't think
17 there's a question pending.

18 THE WITNESS: Okay.

19 COMMISSIONER SANDOVAL: Okay. I would
20 stipulate to that.

21 Q So just my last question has to --
22 has to go with, you have stated here that you
23 had informed SED about these issues, that
24 PG&E, rather, had informed SED about these
25 issues and that SED said that there was no
26 safety issue.

27 In looking at Mr. Johnson's
28 affidavit, it refers to a assigned

1 Commissioner's August 2013 ruling that says
2 that SED has agreed that our operational
3 actions with regard to Lines 147 and 101 have
4 addressed all public safety issues.

5 Did that ruling take into account
6 that the underlying facts of Line 147 and 101
7 were not as has been represented to the
8 Commission at the time that the operating
9 pressure was agreed to?

10 A To the best of my understanding,
11 Commissioner Sandoval, it does, because it's
12 the Order to Show Cause that has brought us
13 here today. And so it recites the errors
14 that we reported, which were that some of the
15 information that was part of that pressure
16 restoration filing turned out not to be
17 correct. And then it has a section entitled
18 Public Safety of Lines 147 and 101 that says
19 Safety and Enforcement Division has confirmed
20 PG&E's representations, agrees that so long
21 as properly conducted pressure tests were
22 performed as represented, Lines 147 and 101
23 can be operated consistent with General Order
24 112-B at the reduced MAOP.

25 Q That last part was "at the reduced
26 MAOP." So are you saying at the -- not at
27 the 365 but at the 330 MAOP?

28 A Well, the -- I only know what SED

1 said from what's in the Order to Show Cause,
2 and it is exactly as I read it, that is, at
3 the reduced MAOP. And it doesn't -- what is
4 set forth here, and I'm looking now at the
5 Order to Show Cause that brought us here with
6 this section. The Order to Show Cause for
7 this afternoon's session is a little
8 different than what it says about that
9 subject. And that one says that prior to
10 issuing this ruling we immediately conferred
11 with the Commission's Safety and Enforcement
12 Division to confirm the representations by
13 PG&E that the lines have been pressure tested
14 and are being operated at reduced MAOP.

15 Remember, as Mr. Johnson's
16 statement sets forth, even prior to the
17 filing of OSC-1, line 147 had been at 300
18 since 2012 and Line 101 since earlier in
19 2013. Then it goes on:

20 The Safety and Enforcement
21 Division emphasize the
22 importance of pressure
23 testing to guard against
24 any recordkeeping
25 shortcomings and agree that
26 all public safety issues
27 have been addressed by
28 PG&E's operational actions.

1 So that's everything I know about
2 what Safety Enforcement Division said.

3 Q Okay. So we can address separately
4 with Safety and Enforcement, but I think that
5 the concern is the change in the underlying
6 facts. So we do appreciate PG&E's very
7 extensive testing, and this certainly shows
8 the importance of that testing and what
9 you've been able to reveal. So the second
10 question is really going to the candor about
11 what the tests revealed.

12 You know, just looking up the
13 definition of errata, for example, I was
14 looking at the BusinessDictionary.com defines
15 errata as short and minor revisions to a
16 printed or published document to correct
17 spelling or other types of mistakes. So
18 perhaps as a procedural matter we also need
19 to clarify in our rules what is the
20 definition of errata and under what
21 circumstances it could be used.

22 But, you know, errata are generally
23 indicate to -- used to indicate minor
24 revisions. And is it your testimony that
25 these revisions were minor when they really
26 were about the substantive facts that were
27 used to establish operating pressure?

28 A Absolutely not. I'm not -- there

1 was -- I'm not saying and there was never any
2 attempt to portray these errors as minor.
3 They are substantive errors. And I, you
4 know, I believe that, you know, in the
5 sentence that followed the one you were
6 questioning me about before we go on to say:
7 "After correcting these errors, the affected
8 segments will have a lower MAOP than approved
9 in D.11-12-048." We were trying to say very
10 forthrightly that we have to operate now at
11 lower pressures than previously authorized
12 because of these errors that we had
13 discovered.

14 And, you know, as far as the
15 nomenclature for errata, you know, I didn't
16 look it up at the time. And as I said, to me
17 errata is a list of errors and corrections.
18 And it never occurred to me that with the
19 scrutiny that everything we have done related
20 to San Bruno gets that whatever we call them
21 people would ignore it.

22 As I said before, I've never been
23 in a proceeding before where everything we
24 file and every word I utter gets parsed and
25 interpreted like this. And so I -- it never
26 crossed my mind that this wasn't going to
27 serve the purpose we intended, which was to
28 bring it to the attention of the parties and

1 the Commission with the thought that the
2 Commission might well want to have a
3 proceeding like this afternoon's, although I
4 must say not pursuant to an order to show
5 cause, but a proceeding that ALJ Bushey and
6 Commissioner Florio might convene to, you
7 know, assess the status of PG&E's MAOP
8 validation or the status of its records or
9 something that would provide a forum for the
10 parties to ask questions and get more
11 information. That was what we were trying to
12 tee up, if you will, and not to sneak
13 something below the radar screen.

14 COMMISSIONER SANDOVAL: Well, thank you
15 for recognizing that this was substance, and
16 I would just say substantive. I would just
17 say to every one that in light of Rule 1.1
18 and the duty of candor to, both to this
19 Commission and frankly to the public, that
20 when a parties finds the facts were not in
21 accordance with what we submitted to the
22 Commission and the record that they would be
23 on a material matter, we said the facts were
24 X and the facts turned out to be Y on a
25 matter that is material, there needs to be a
26 really big red flag especially when those
27 facts were the basis for an order of this
28 Commission, that I believe certainly an

1 errata is an inappropriate way to
2 characterize that.

3 But I think that we all have a duty,
4 any one before this Commission has a duty
5 when the substantive facts were not in
6 accordance with what was represented to be
7 and those facts were fundamental to the
8 Commission's order to let us know and to let
9 everyone know who participated in that order
10 in the most forthright manner possible that
11 the facts were not in accordance with what
12 was represented on a substantive material
13 matter. So thank you.

14 ALJ BUSHEY: Thank you, Commissioner
15 Sandoval.

16 Other questions from other
17 commissioners?

18 COMMISSIONER FERRON: Two --

19 ALJ BUSHEY: Commissioner Ferron.

20 COMMISSIONER FERRON: Sorry.

21 EXAMINATION

22 BY COMMISSIONER FERRON:

23 Q Just two quick questions. I'm
24 trying to construct a timeline like we all
25 are.

26 So PG&E submitted what we're
27 calling OSC-1 on July 3rd. When did you
28 receive notice that it was rejected by the

1 Docket Office?

2 A I believe it was August 5th.

3 Q So roughly a month after it was
4 submitted?

5 A Yes.

6 Q Now, as I understand it, there was
7 a conversation between the engineers at PG&E
8 and SED in February and then a conference
9 call on March 20th, correct?

10 A February was actually an e-mail
11 exchange that said, we want to talk to you
12 about a number of issues including this one
13 class out and setting up the, what ultimately
14 wound up being the March 20th conference
15 call.

16 Q So between that time and the
17 submission on July 3rd, did any one from SED
18 or any one else in the Commission offer any
19 guidance as to how PG&E should file or
20 otherwise give notice about this?

21 A Not that I am aware of. And I can
22 certainly, none, tell you categorically, none
23 that came to me as the person who made the
24 decision what to call it that's caused all of
25 this.

26 Q And do you know what the level of
27 seniority was of the individuals in SED where
28 this communication was happening?

1 A I guess I don't know the level of
2 seniority. I know it was the engineer who
3 has been most active in -- who is the
4 reviewer of the material in the original
5 pressure restoration filing and the
6 individual who has been involved throughout
7 in looking at PG&E's hydrotests and
8 everything related to these pipelines.

9 COMMISSIONER FERRON: Okay. I see
10 Judge Bushey is nodding. So can I assume
11 that you know who this individual is?

12 ALJ BUSHEY: I know who it was.

13 COMMISSIONER FERRON: Great. Okay.
14 That's all I have. Thank you.

15 ALJ BUSHEY: Thank you.

16 Commissioner Florio.

17 COMMISSIONER FLORIO: I'll just say,
18 it's awfully tempting after 28 years to have
19 Mr. Malkin under oath. I don't have any
20 questions on the subject.

21 (Laughter)

22 ALJ BUSHEY: Thank you for your
23 strength.

24 THE WITNESS: I particularly thank you
25 for the strength.

26 (Laughter)

27 THE WITNESS: Remembering at least one
28 occasion when the shoe was on the other foot.

1 COMMISSIONER FLORIO: Right, right.

2 ALJ BUSHEY: Redirect?

3 MS. FIALA: Thank you, your Honor. I
4 think we've covered what I intended to cover
5 during the testimony.

6 ALJ BUSHEY: Final questions for the
7 witness?

8 (No response)

9 ALJ BUSHEY: Witness is excused.

10 MS. FIALA: We would submit OSC-1 and
11 OSC-2 for admission into the record.

12 ALJ BUSHEY: Any objections?

13 (No response)

14 ALJ BUSHEY: OSC-1 and 2 are received
15 then.

16 (Exhibit No. OSC-1 was received into
17 evidence.)

18 (Exhibit No. OSC-2 was received into
19 evidence.)

20 ALJ BUSHEY: OSC-3?

21 MR. GRUEN: Yes, your Honor. We would
22 move to submit OSC-3 into evidence.

23 ALJ BUSHEY: Okay. Anything else to --
24 I'm sorry. Any objections to receiving OSC-3
25 into the record?

26 (No response)

27 ALJ BUSHEY: Hearing none, then OSC-3
28 is received into the record.

(Exhibit No. OSC-3 was received into
evidence.)

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ALJ BUSHEY: Next steps. Ms. Fiala, has PG&E presented every fact and argument that it wishes to present to the Commission on the orders addressed in the OSC ruling?

MS. FIALA: Yes, your Honor.

ALJ BUSHEY: Okay. Do any other parties wish to submit anything further?

MR. LONG: Your Honor, would -- I believe that the -- as much as I don't need another pleading in my life at this point, I believe it would be helpful to the Commission to have the benefit of argument from the parties on -- and recommendations on what should be done here. I would ask if the --

ALJ BUSHEY: I don't know about --

MR. LONG: -- Commission agrees.

ALJ BUSHEY: -- argument. The recipient of the OSC is prepared to rest on the record as it exists.

MR. LONG: Right. But the point is, we have not had an opportunity to present -- we as the parties have not had an opportunity to present our recommendations as to what the Commission should do. I mean PG&E's recommendation apparently is do nothing. And we have a strong difference of opinion on that. And the opportunity to ask factual

1 cross-examination questions is not the same
2 as the opportunity to present, you know,
3 recommendations and the basis for those
4 recommendations.

5 ALJ BUSHEY: 20 days for written
6 recommendations, five days afterwards?
7 Someone look at a calendar. What do those
8 dates work out to be?

9 MR. LONG: That would work out to
10 September 26th for opening pleadings. And
11 then five days after would be -- would be
12 October 1st.

13 ALJ BUSHEY: Are those both days of the
14 week that the Commission is open?

15 MR. LONG: Yes.

16 ALJ BUSHEY: Very good. All right.
17 We'll have opening recommendations, brief
18 recommendations focused on exactly what the
19 Commission should do on September 26th, the
20 responsive pleadings filed and served on
21 October 1st. With the filing of the replies,
22 the matter will be considered submitted to
23 the Commission and the record will be closed
24 on this issue.

25 I will remind every one that this is
26 an Order to Show Cause. It's an adjudicatory
27 proceeding. There will be no ex parte
28 contacts as provided in the Commission's

1 rules.

2 Anything further to come before the
3 Commission on this issue?

4 (No response)

5 ALJ BUSHEY: Comments from
6 Commissioners, Chief Judge Clopton?

7 (No response)

8 ALJ BUSHEY: Hearing none then, this
9 Order to Show Cause hearing is concluded, and
10 the Commission is adjourned. Thank you.

11 (Whereupon, at the hour of 12:06
12 p.m., this matter having been submitted
13 upon receipt of reply briefs due
October 1, 2013, the Commission then
adjourned.)

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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

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Ana M. Gonzalez, Certified Shorthand Reporter
No. 11320, in and for the State of California do
hereby certify that the pages of this transcript
prepared by me comprise a full, true and correct
transcript of the testimony and proceedings held in
the above-captioned matter on September 6, 2013.

I further certify that I have no interest in the
events of the matter or the outcome of the proceeding.

EXECUTED this 6th day of September, 2013.

Ana M. Gonzalez
CSR No. 11320

BEFORE THE PUBLIC UTILITIES COMMISSION
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CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Thomas C. Brenneman, Certified Shorthand Reporter No. 9554, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on September 6, 2013.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 6th day of September, 2013.

Thomas C. Brenneman
CSR No. 9554

BEFORE THE PUBLIC UTILITIES COMMISSION
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Rulemaking
11-02-019

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, Gayle Pichierri, Certified Shorthand Reporter No. 11406, in and for the State of California do hereby certify that the pages of this transcript prepared by me comprise a full, true and correct transcript of the testimony and proceedings held in the above-captioned matter on September 6, 2013.

I further certify that I have no interest in the events of the matter or the outcome of the proceeding.

EXECUTED this 6th day of September, 2013.

Gayle Pichierri
CSR No. 11406