

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

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

THE DIVISION OF RATEPAYER ADVOCATES'
REPLY COMMENTS ON PACIFIC GAS AND ELECTRIC COMPANY'S
RULE 1.1 VIOLATIONS

Q Can you tell us why this pleading [the errata] does not include the fact that this discovery was made eight to nine months prior to the date of the pleading?

*A For purposes of this pleading, which was to provide notice to the commission and the parties that there were errors and how they were corrected, **that seems to me like way too much information.** ...*

16A RT 2361-2362: 23-5 (PG&E/Malkin)

... to the extent your question is attempting to ask me in essence about what I knew and when I knew it, that -- ... -- well, all of that, that information, what I knew and when I knew it, is all derived from attorney-client communications.

16A RT 2381-2382: 25-15 (PG&E/Malkin)

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October 1, 2013

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I. INTRODUCTION

Pursuant to the ruling made in the Order to Show Cause Hearing on September 6, 2013¹ the Division of Ratepayer Advocates (“DRA”) submits these reply comments to the September 26, 2013 Recommendations regarding how the Commission should respond to Pacific Gas and Electric Company’s (“PG&E”) violations of the Commission’s Rule 1.1 of Practice and Procedure.

The gravamen of PG&E’s defense is that “[t]he only evidence before the Commission is that the decision to use the word ‘Errata’ in the title of its [pleading] reflects the good faith professional judgment of PG&E’s counsel” and that it tried to file the *errata* on July 3 “because the work underlying [the *errata*] had been completed the day before.”² PG&E concludes: “Accordingly PG&E respectfully requests that the Commission conclude that the Company’s submission of [the *errata*] did not violate Rule 1.1.”³

PG&E further argues that “[t]he Rule 1.1 OSC does not suggest that [the *errata*] contained any false statement of fact or law. Accordingly, the first question under Rule 1.1 is whether the Commission or its staff was misled or likely to be misled by the title of [the *errata*] or its July 3rd submission.”⁴

In this manner, PG&E’s entire Recommendations pleading is an attempt to mislead the Commission through misrepresentations of both fact and law. Contrary to PG&E’s assertion, the evidence shows that PG&E’s *errata* **does** contain a false statement of fact because it *omitted* that PG&E had discovered its data errors on October 18, 2012, nearly nine months before PG&E attempted to file the *errata*.⁵ PG&E’s

¹ 16A RT 2415: 16-24.

² PG&E Recommendation, p. 2.

³ PG&E Recommendation, p. 2.

⁴ PG&E Recommendation, p. 3.

⁵ See Verified Statement, ¶ 27. As discussed in Section II.A below, the Commission considers “omissions” to be misrepresentations and thus violations of Rule 1.1.

Recommendations pleading contains misrepresentations of law because, among other things, PG&E argues that the Commission must show that it was misled or likely to be misled by the information in the *errata* and that the Commission must also show that PG&E had the *intent* to mislead.⁶ While both elements are demonstrated by the evidence, there are no such requirements to prove a Rule 1.1 violation. Nevertheless, the record shows that the Commission *was* misled because *no one* knew, until after PG&E submitted its Verified Statement on August 30, 2013, that there had been a nearly nine month delay between PG&E's discovery of the data error in Line 147/Segment 109 and PG&E's attempted *errata* filing. The record also shows that PG&E's delay in notifying the Commission of the data errors was intentional.

As PG&E well knows, the very existence of this nearly nine month delay is the crux of PG&E's Rule 1.1 violation. PG&E's delay in notifying the Commission of the data error proves the violation, and it proves that PG&E's violation was intentional. The fact that PG&E's Recommendations pleading never acknowledges the delay is telling.

PG&E weaves a web of deceit in its Recommendations pleading to draw attention away from the fact that it withheld mission-critical information from the Commission for nearly nine months. When asked why its *errata* failed to disclose the discovery date of the Line 147/Segment 109 error, PG&E explains that this was "way too much information."⁷ PG&E's response is simply *not credible*. Other half-hearted explanations that the work underlying the *errata* was not complete until July 2 are similarly *not credible*.⁸ PG&E made a calculated decision to withhold the information, provides

⁶ PG&E Recommendations, p. 3.

⁷ 16A RT 2361-2362: 23-5 (PG&E/Malkin):

Q Can you tell us why this pleading [the *errata*] does not include the fact that this discovery was made eight to nine months prior to the date of the pleading?

A For purposes of this pleading, which was to provide notice to the Commission and the parties that there were errors and how they were corrected, that seems to me like way too much information. It was – as I said, the purpose of this was to give notice of the errors and the corrections.

⁸ PG&E Recommendations, p. 2. *See also* DRA Recommendations, p.2.

incredible reasons for the withholding, and hides behind the attorney/client privilege when its assertions are questioned.⁹

As discussed below, the Commission has found that a Rule 1.1 violation is based upon whether a material misrepresentation or omission harms the regulatory process. In *Sprint PCS* the Commission fined Sprint \$200,000 for material omissions even though its conduct did not harm any customer or competitor, and caused no physical or economic harm to anyone else; the Commission found that its omission of critical information harmed the regulatory process ***because it undermined staff's ability to do its job.***¹⁰

Here, PG&E has not only “harmed” the regulatory process and undermined staff’s (and intervenors’) ability to do their jobs, it has put the basic functioning of the Commission, and PG&E’s commitment to complying with the Commission’s regulatory mandates, into question. It is fair to conclude, given the baseless arguments in PG&E’s Recommendations pleading, that PG&E has *no intention* of being forthcoming with the Commission about the quality of its gas transmission pipeline database, its validation processes to determine the Maximum Allowable Operating Pressure (“MAOP”) of a pipeline, or any other aspect of its Pipeline Safety Enhancement Plan (“PSEP”) implementation.

The Commission should recognize that PG&E’s implementation of its PSEP is questionable. At a minimum the Commission should require PG&E to provide a *comprehensive* Quality Assurance and Quality Control Plan for *all aspects* of its PSEP Implementation, and hire an Independent Monitor to observe and publically report on all aspects of PG&E’s PSEP implementation, including PG&E’s compliance with its QA/QC Plan.

⁹ 16A RT 2381-2382: 25-15 (PG&E/Malkin): “... [T]o the extent your question is attempting to ask me in essence about what I knew and when I knew it, that -- all of that information, other than -- well, all of that, that information, what I knew and when I knew it, is all derived from attorney-client communications.”

¹⁰ See, e.g., *Sprint PCS*, D.01-08-019, *mimeo*, at 14.

In addition to these critical structural remedies to address PG&E's Rule 1.1 Violations, DRA supports The Utility Reform Network's ("TURN") recommendation that a fine be imposed on PG&E, rather than on individuals within PG&E, or its outside counsel.¹¹ DRA also supports TURN's recommendation that PG&E be required to pay the maximum fine of \$50,000 for each daily violation, and defers to TURN's calculation that this yields of fine of \$12,650,000.¹² To the extent that any fine can have any deterrent value on PG&E at this point, DRA believes that only a fine in this range will serve that purpose.

II. DISCUSSION

A. The Totality Of The Circumstances Demonstrate That PG&E Violated Rule 1.1 and That It Continues To Violate Rule 1.1

1. What The Record Shows

The totality of the circumstances demonstrate that PG&E has violated, and continues to violate, Rule 1.1 regarding the status of its Maximum Allowable Operating Pressure ("MAOP") validation and the implementation of its PSEP, and that these violations are intentional.

Among other things, the record shows:

- PG&E discovered the data errors regarding Line 147/Segment 109 on October 18, 2012;¹³
- PG&E management learned of the data errors on November 16, 2012;¹⁴
- In follow-up investigations regarding the Line 147/Segment 109 error, PG&E discovered numerous other errors in its recordkeeping regarding the lines that were the subject of D.11-12-048;¹⁵

¹¹ TURN Recommendations, pp. 9-10.

¹² TURN Recommendations, p. 9.

¹³ Verified Statement, ¶ 27; and 16A RT 2379-2380 (PG&E/Malkin) (providing approximate dates of the discovery).

¹⁴ PG&E Response to SED 006-01. The redacted version of this PG&E partial response to SED-006-01 is attached as Attachment B to the DRA Recommendation. DRA files a Motion to include this record into evidence on September 30, 2013.

¹⁵ See, e.g., Verified Statement, ¶¶ 39-47 and DRA Recommendations, pp. 13-14.

- The Recordkeeping Investigation (I.11-02-019) into PG&E’s past recordkeeping errors was pending at the time PG&E discovered these errors;
- PG&E waited nearly 9 months after they were discovered before notifying the Commission of the data errors on Line 147/Segment 109, after the Recordkeeping Investigation was fully briefed;
- PG&E did not provide information regarding these data errors, or the others it discovered,¹⁶ in response to a continuing data request from CPSD;¹⁷
- PG&E intentionally limited the record in the Order to Show Cause hearing by providing an attorney as its only witness, and asserting attorney/client privilege whenever questions regarding what PG&E did and why were posed.¹⁸
- PG&E’s witness admitted that PG&E had an “absolute obligation” to notify the Commission of the data errors,¹⁹ but steered clear of commenting on *when* such notice was due.

Taken together, it is clear that PG&E has violated Rule 1.1, especially when viewed in light of the Commission’s determinations in *Sprint PCS*, as described in more detail below.

B. *Sprint PCS* Demonstrates That PG&E’s Defense Has No Basis

1. PG&E Wrongly States That Intent Must Be Proven

PG&E boldly and unequivocally states that “As the Commission has repeatedly stated, state of mind is an essential element of a violation of Rule 1.1. ‘In determining whether a violation of Rule 1 has occurred, one of the steps we must surmount is whether the person who made the statement had the requisite state of mind.’”²⁰ PG&E relies upon a 1994 Commission decision and ignores that this Commission’s later *Sprint PCS* decision found that intent, or any other state of mind, need *not* to be proven. Rather,

¹⁶ See, e.g., Verified Statement, ¶¶ 39-47.

¹⁷ CPSD Recommendations, pp. 2-3.

¹⁸ See, e.g., 16A RT 2381-2382: 25-15 (PG&E/Malkin) and 16A RT 2396 (PG&E/Malkin).

¹⁹ 16A RT 2357: 14 (PG&E/Malkin).

²⁰ PG&E Recommendation, p. 3, quoting *Investigation of All Facilities-Based Cellular Carriers*, D.94-11-018, 1994 Cal. PUC LEXIS 1090, at *80-81.

violations can occur *unintentionally* when there is recklessness, gross negligence, or lack of due professional care in communications with the Commission, and the standard for such a showing is minimal.²¹

In *Sprint PCS*, the Commission found that the company's failure to timely and comprehensively disclose requested information to Commission staff harmed the regulatory process, and would not be tolerated, *even if intent was not demonstrated*. The details of *Sprint PCS* are instructive to this case.

In *Sprint PCS* the Commission found that Sprint PCS had violated Rule 1 by failing to disclose relevant information that it had certain NXXs (telephone prefix numbers) in its possession. Staff in *Sprint PCS* discovered the omission through other means. When confronted, Sprint PCS claimed the omission was due to unintentional error and differences in interpretation regarding the intent of staff's data request. In claiming that it did not intend to deceive the Commission, Sprint PCS also pointed out that it made the information available to staff through other means. In response to this claim, the Commission astutely observed that later disclosure does not correct the violation:

Merely because a party initially withholds information from the staff for a particular purpose and then later discloses the information in some different or unrelated context(s) does not necessarily mean that the initial nondisclosure was purely unintentional. The timing or manner in which information is disclosed could potentially have a material effect on the outcome desired by the disclosing party. If a party is able to simply claim ignorance of the initial omission, the party would benefit from the initial nondisclosure and escape any sanctions or penalties.²²

²¹ See, e.g., *Sprint PCS*, D.01-08-019, *mimeo*, at 16 (concluding that failure to provide truthful and complete answers to a staff data request was a failure to exercise "due professional care.") See also Administrative Law Judge's Ruling Denying Southern California Edison Company's Motion For Summary Adjudication Of Alleged Rule 1.1 Violations Related To Data Request Responses Dated December 10, 2010, I.09-01-018 (Malibu Fire Investigation), January 10, 2012 ("Violations of Rule 1.1 are flagrant when there is purposeful intent to mislead the Commission, but violations can also occur unintentionally when there is recklessness, gross negligence, or lack of due professional care in communications with the Commission." Citations to D.04-04-065 at 35-36; and D.01-08-019 at 15-16.)

²² *Sprint PCS*, D.01-08-019, *mimeo*, at 8-9.

The Commission then clarified that *intent to deceive is not required to prove a Rule 1.1 violation, but goes to the weight of the penalty*:

In any event, the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation.²³

Finally, the Commission found that Sprint PCS' interpretation of the staff data request was too narrow. The Commission determined that Sprint PCS should have broadly construed the Staff data requests *to provide Staff a comprehensive picture of the problem Staff was addressing*:

Sprint PCS' purported interpretation of the staff's data request is unduly narrow. The intent of the staff's data request was to gain a comprehensive picture of how Sprint PCS was utilizing the numbering resources within its possession in the identified rate centers as a basis to evaluate its need for new numbers going forward in time. ... Therefore, Sprint PCS should have identified the Inglewood NXX in order to provide a complete picture of numbering resources in response to the staff request.²⁴

2. *Sprint PCS Imposes A Significant Penalty Based Solely On Harm To The Regulatory Process*

After reaching the conclusions described above, the Commission in *Sprint PCS* turned to the question of the penalty. The Commission recognized that Sprint PCS' actions "did not cause any physical or economic harm to others" and that the company did not significantly benefit from its conduct.²⁵ The Commission concluded that the most significant harm was the harm to the regulatory process caused by Sprint PCS' misinformation:

We conclude that Sprint PCS' conduct harmed the regulatory process by failing to report material information in response to a staff data request. In this instance, the staff was carrying out its regulatory duties to ensure that scarce numbering resources were properly allocated based upon legitimate need. Without true and complete responses to the data request, the staff's

²³ *Sprint PCS*, D.01-08-019, *mimeo*, at 9.

²⁴ *Sprint PCS*, D.01-08-019, *mimeo*, at 9.

²⁵ *Sprint PCS*, D.01-08-019, *mimeo*, at 14.

ability to properly assess and act upon Sprint PCS' request for codes was undermined.²⁶

Thus, while Sprint PCS' conduct did not harm any customer or competitor, and caused no physical or economic harm to anyone else, the Commission found that its omission of critical information harmed the regulatory process ***because it undermined staff's ability to do its job.***

In determining the amount of the fine, the Commission did not accept Sprint PCS' plea that staff could have found the information elsewhere. Again focusing on staff's need for accurate information, the Commission explained that the company's failure to provide truthful and complete answers to staff data requests was a failure "to exercise due professional care to ensure the integrity of information transmitted to the Commission and its staff."²⁷

In summary, the Commission found that Sprint PCS violated Rule 1²⁸ because it withheld material information that the company should have known staff needed to do its job. To reiterate: "staff must be able to rely upon the representations made to it in response to data requests in order to carry out its duties of protecting the public interest effectively."²⁹ Even if staff could have found the information through other means, and even if the outcome of the matter would not have been resolved differently, the Commission fined Sprint PCS \$200,000 because the violation undermined the regulatory process.

²⁶ *Sprint PCS*, D.01-08-019, *mimeo*, at 14.

²⁷ *Sprint PCS*, D.01-08-019, *mimeo*, at 16 (*emphases added*).

²⁸ Rule 1 is the predecessor to Rule 1.1.

²⁹ *Sprint PCS*, D.01-08-019, *mimeo*, at 16.

C. Rule 1.1 Does Not Require a Showing of Commission Reliance on the Misrepresentation

PG&E next asserts that the Commission or its Staff must demonstrate that they have been misled in order for a Rule 1.1 violation to occur.³⁰ PG&E provides no Commission decision or other legal support for this assertion. Rather, PG&E relies upon a hyper-technical argument that because its witness testified that he did not intend to mislead the Commission, the Commission must then make a counter-showing.³¹

The logical conclusion of PG&E's argument is stunning: PG&E may make misrepresentations to the Commission or its staff, or withhold information from them. However, so long as the Commission or its staff do not rely upon these misrepresentations or omissions, or catches them before it relies upon them, then there is no Rule 1.1 violation. Clearly, such an interpretation of Rule 1.1 does not advance its purposes – to require that all practice before the Commission, and with its staff, be honest and forthright *from the start*. Further, it has the perverse effect of undermining Rule 1.1 enforcement – if a utility's misrepresentations are quickly identified and corrected by Commission staff, this results in no finding of a violation, and thus no penalty to the bad actor because the Commission was not misled.

Finally, there is no Commission decision which articulates a requirement that the Commission or Staff be misled in order to find that Rule 1.1 has been violated. Thus, while many of the Commission's Rule 1.1 cases may find that staff was misled, they do not make that a requirement of the violation, and they do not provide sufficient evidence to prove the point. Thus, for example, while *Sprint PCS* finds that staff in that case was misled,³² there is no explanation of *how* staff was misled except that staff appears to have been distracted from its work in the public interest. There is also no discussion of how

³⁰ PG&E Recommendation, pp. 3-4: "The evidentiary record contains no evidence that the Commission, its staff or any party was misled or that PG&E acted with any intent to mislead in connection with the submission of Exhibit OSC-1."

³¹ PG&E Recommendation, p. 4.

³² *Sprint PCS*, D.01-08-019, *mimeo*, at 8 and Conclusion of Law 2.

long it took for staff to discover the omission. These are both critical points of evidence that would be included if it was necessary to actually establish that staff was misled. PG&E's assertion makes no sense.

In summary, nothing in *Sprint PCS*, or any other Commission decision requires a showing that the Commission or staff actually was misled to find a Rule 1.1 violation, and it would be inappropriate to reach such a conclusion here. Rather, the question of whether the Commission has been misled is similar to the question of intent.³³ If the Commission or staff relies heavily on the misrepresentation or omission, it will be reflected in the penalty.

D. PG&E Has Violated Rule 1.1 And Significantly Harmed The Regulatory Process

Sprint PCS was fined \$200,000 for failing to provide information staff could have otherwise obtained because Sprint PCS failed “to provide truthful and complete answers to the data requests propounded and to exercise due professional care to ensure the integrity of information transmitted to the Commission and its staff.”³⁴ As the Commission in *Sprint PCS* correctly observed, a utility's failure to respond to staff data requests truthfully and completely and to ensure the integrity of that information impedes staff's ability “to carry out its duties of protecting the public interest effectively.”³⁵ Thus, the rule from *Sprint PCS* appears to be that utility misrepresentations (or omissions) that harm the regulatory process violate Rule 1.1. A version of this rule has been applied in other Commission decisions.³⁶

³³ These two concepts are reflected in *Sprint PCS* as “severity of the offense” and “conduct of the utility.” See *Sprint PCS*, D.01-08-019, *mimeo*, at 13-15.

³⁴ *Sprint PCS*, D.01-08-019, *mimeo*, at 16.

³⁵ *Sprint PCS*, D.01-08-019, *mimeo*, at 16; see also *Id.* at 18.

³⁶ See, e.g., D.07-04-046 (“We conclude that San Gabriel's failure to disclose these relevant facts was misleading. San Gabriel knowingly provided misleading information to the Commission regarding issues that are material to this proceeding. The submittal of false information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times.”)

PG&E's omissions are far more significant than those identified in *Sprint PCS*. There is no question that PG&E intentionally withheld mission-critical information from the Commission for an extended period of time, and that this withholding harmed the regulatory process. Among other things, PG&E's intent is evidenced by its admission that it knew it had an "absolute obligation" to inform the Commission,³⁷ combined with its refusal to acknowledge or explain the delay in any meaningful manner.³⁸ Evidently, PG&E hopes that by remaining silent on the reasons for its delay, it will succeed in misdirecting the Commission from the fact that there was, in fact, a material and substantial delay. Nevertheless, a showing that PG&E has failed to disclose information that results in harm to the regulatory process is sufficient here.

And there is no question that PG&E's withholding of this mission-critical information about the MAOP of the lines running through San Bruno and neighboring cities has harmed the regulatory process. Among other things, PG&E allowed a Commission decision on a critical public safety issue³⁹ to stand uncorrected for many months and because of its data error, it was operating Lines 101 and 147 for an indefinite period of time at the incorrect MAOP. During the same time frame, PG&E was routinely submitting pleadings and other documents to both this Commission and the National Transportation Safety Board ("NTSB") asserting that its MAOP validation work was complete and that it had taken meaningful efforts to ensure the accuracy of that work and the safety of its system.⁴⁰

³⁷ 16A RT 2357: 14 (PG&E/Malkin).

³⁸ See, e.g., DRA Recommendation, pp. 9-10.

³⁹ D.11-12-048.

⁴⁰ See, e.g., CPSD Recommendations, pp. 3-8 regarding PG&E's representations to this Commission and the NTSB. See also various PG&E representations regarding its PSEP quality control in Pacific Gas And Electric Company's Response To Motion Of The Division Of Ratepayer Advocates For A Ruling Directing Pacific Gas And Electric Company To Provide Quality Assurance And Quality Control Plans For The Development And Implementation Of Its Updated Pipeline Safety Enhancement Plan, R.11-02-019, July 23, 2013.

In determining the appropriate punishment for PG&E, the Commission should be cognizant of the large number of aggravating circumstances in this case. Among them:

- ***PG&E benefitted substantially from its failure to disclose the data errors while the Recordkeeping Investigation (I.11-02-016) was pending.***

As *Sprint PCS* has recognized, timing is everything: “The timing or manner in which information is disclosed could potentially have a material effect on the outcome desired by the disclosing party.”⁴¹ Concurrent with PG&E’s discovery of the data errors, CPSD Advocacy Staff and several other intervenors, including DRA, TURN, the City of San Bruno, and the City and County of San Francisco, were actively litigating the Recordkeeping Investigation into PG&E’s past record failures. Disclosure of the current database errors in PG&E’s system would have been disastrous to PG&E’s defense in that proceeding. So PG&E chose not to disclose this information until the briefing in that case was concluded.⁴²

- ***PG&E chose to assert attorney/client privilege to avoid explaining the reasons for its delay.***

PG&E chose a litigation strategy designed to keep the Commission in the dark about its actual motivations behind the delay. PG&E’s silence does not mean there is no record evidence. PG&E’s silence is the evidence. It is fair for Commission to conclude that PG&E intentionally withheld the data error information to mitigate impacts to the Recordkeeping and other investigations pending at the time of its discovery.

- ***CPSD had a continuing data request in the Recordkeeping Investigation for PG&E to provide it notice “concerning potential errors in PG&E’s MAOP validation process.”***⁴³

PG&E ignored its obligation to notify CPSD of any errors in its MAOP validation process through this data request.

- ***PG&E has repeatedly represented to the Commission that it has adequate quality controls in place and that its MAOP validation has been completed.***

Among other things, and as set forth in the CPSD Recommendations pleading, during the same time that PG&E was aware of its data errors on Line 147 and investigating the possibility of other errors on its system, PG&E’s President, Chris Johns, represented in a letter to the NTSB that it had completed MAOP validation of all

⁴¹ *Sprint PCS*, D.01-08-019, *mimeo*, at 8-9.

⁴² DRA Recommendations, pp. 6-8.

⁴³ CPSD Recommendations, pp. 2-3.

pipelines in class 3 and 4 locations and class 1 and 2 high consequence areas.⁴⁴ How could such MAOP validation be complete if it was based on inaccurate information?

PG&E has made various representations regarding its PSEP quality control in response to a DRA Motion in this docket asking the Commission to require a comprehensive QA/QC Plan for all aspects of PG&E's PSEP.⁴⁵

□ ***PG&E's defense of this Rule 1.1 OSC contains material misrepresentations.***

As described in Sections I and II.A above, PG&E's Recommendations pleading contains misrepresentations of both fact and law. As described in Section II.E below, there is also evidence that PG&E's Verified Statement and testimony in this OSC potentially contain material misrepresentations.

Given the significant and material aggravating factors set forth above, and also described in the TURN, CPSD, and San Bruno Recommendations pleadings, it is unclear that any financial penalty would be an adequate deterrent to PG&E's intentional, intransigent, and remorseless behavior.⁴⁶ Rather, as described in the Introduction and Conclusions here, in considering appropriate remedies, the Commission should combine the most significant fine available to deter both PG&E and other utility conduct of this type, while simultaneously adopting structural safeguards to actively manage PG&E's

⁴⁴ CPSD Recommendations, p. 7.

⁴⁵ DRA's Motion is attached to its Recommendations as Attachment C. PG&E's Response to that DRA Motion is cited in footnote 40 above.

⁴⁶ Any PG&E defense relying upon PG&E's alleged efforts in February and March of 2013 to notify CPSD Advisory Staff regarding the discovery of the errors should not be taken seriously. The record is unclear on what, if anything, PG&E communicated to CPSD Advisory Staff, and what, if anything, CPSD Advisory Staff said in response.

As described Section ___ above, the CPSD Recommendation pleading suggests that PG&E failed to provide information requested by the CPSD Advisory Staff in a timely manner and that it "misrepresented to the Commission *in this OSC proceeding* the [CPSD Advisory Staff's] reaction to the information provided by PG&E." CPSD Recommendation, p. 3 (*emphases added*). DRA efforts to obtain CPSD Advisory Staff's response to PG&E's assertions regarding the communications were rebuffed. DRA served a data request on CPSD's Advisory Staff on September 11, 2013 regarding CPSD communications with PG&E. On September 26, 2013, DRA received a letter from CPSD's attorney declining to respond to the data request.

In light of the concerns expressed in the CPSD Recommendation pleading, and absent CPSD's response to DRA's data requests regarding what, if anything, was communicated to PG&E, any PG&E representations regarding what was communicated to CPSD Staff cannot be substantiated, are suspect, and should be stricken from the record.

PSEP implementation activities. Absent such structural safeguards, it is clear that PG&E's continued independent implementation of the PSEP threatens public safety.

E. PG&E's Verified Statement And Testimony Potentially Contain Additional Misrepresentations

In addition to PG&E's proven Rule 1.1 violations, as discussed above, there is evidence that PG&E – in defending this OSC - made misrepresentations in both its Verified Statement and its testimony.

The CPSD Recommendation pleading asserts that PG&E failed to provide CPSD Staff with requested documents regarding the pipeline data errors in a timely manner and that PG&E misrepresented CPSD Staff's reaction to the information provided by PG&E:

PG&E failed to provide this staffer with requested documents and information concerning the errors until the end of May, 2013, and further misrepresented to the Commission in this OSC proceeding the contact's reaction to the information provided by PG&E (no staff personnel has ratified or approved PG&E's submissions.)...⁴⁷

With regard to these CPSD concerns, PG&E's Verified Statement confirms that PG&E did not provide requested data to CPSD Staff in a timely manner.⁴⁸ Presumably, the CPSD Recommendation also takes issue with Mr. Malkin's testimony that "... as the Safety and Enforcement Division said and Mr. Johnson's verified statement also says, **there is no safety issue and there never was.**"⁴⁹

Clearly, this issue of whether PG&E misrepresented CPSD's communications, either in testimony or elsewhere, should be investigated.

Further, PG&E response to DRA data request received yesterday (September 30, 2013), suggests that the discovery of the gas leak in Line 147/Segment 109 was *not* the result of a "routine PG&E leak survey of Line 147" as set forth in the Verified Statement

⁴⁷ CPSD Recommendation, p. 3.

⁴⁸ Verified Statement, ¶ 68, showing that PG&E took over a month to provide CPSD with requested information. *See also* 16A Record Transcript (RT) 2356-2357 (PG&E/Malkin).

⁴⁹ 16A RT 2382: 4-8 (PG&E/Malkin) (*emphases added*).

and PG&E's testimony.⁵⁰ Rather, it appears that the gas leak was discovered as the result of an alert PG&E crew leader who was present during a water main repair.⁵¹

At a minimum, the record in this proceeding should remain open to accommodate additional information, like this data response, that becomes available. Further discovery, and potentially hearings, may be appropriate to resolve these troubling potential misrepresentations in PG&E's Verified Statement and testimony.

In sum, there are legitimate questions regarding whether PG&E committed Rule 1.1 violations in its interactions with CPSD (by failing to provide requested information regarding its data errors in a timely manner), and whether PG&E's Verified Statement and/or testimony in this Rule 1.1 OSC contain further misrepresentations. The abbreviated time frame for this Rule 1.1 OSC – 14 business days to file Recommendations, three business days to file replies, and no express discovery rights – has hampered pursuit of these important inquiries.

Given more time, and based on what the parties have discovered after only scratching the surface, it is clear that there is evidence of substantially more Rule 1.1 violations than those identified in the Ruling opening this Rule 1.1 OSC, and that PG&E committed additional Rule 1.1 violations in its defense in this OSC.⁵² Consequently, in

⁵⁰ Verified Statement, ¶ 25; 16A RT 2364-2365: 26-4.

⁵¹ See PG&E's data response to DRA OSC-01, Q40, is attached hereto as Attachment A. DRA will file a motion to enter this data response into the record of this proceeding before the filing of this pleading. The data response reads: "On October 13, 2012, a PG&E gas crew leader was performing a standby during a water main repair conducted near our pipeline by the local water utility. The gas crew leader observed bubble formations in the water, with one small bubble appearing at intervals of approximately 30 seconds. Bubble formations can sometimes be a sign of a gas leak. The gas crew leader also smelled what appeared to be a faint odor of gas. As a result, the gas crew leader reported a potential leak for further investigation. A leak surveyor investigated the potential leak that same day, but was unable to obtain a useable reading with his gas detection device due to the accumulation of water and mud from the nearby water main break. The leak surveyor returned to the site on the morning of October 15, 2012, and was able to confirm the leak as discussed in Paragraph 25 of the Verified Statement. The leak surveyor then remained on site until arrival of the construction crew discussed in paragraph 26 of the Verified Statement."

⁵² See, e.g., Chief Administrative Law Judge ("ALJ") and Assigned ALJ Ruling, issued in this docket on August 19, 2013.

the unlikely event that the Commission concludes that the record in this Rule 1.1 proceeding is as narrow as PG&E claims,⁵³ and/or that a Rule 1.1 violation has *not* been demonstrated, there is ample evidence that the proceeding should be reopened to allow additional inquiry into the matter.

III. CONCLUSIONS

As an initial matter, PG&E must be fined the maximum amount possible - \$12,650,000 as calculated by TURN - in order to generate some measure of deterrence. More significantly, the evidence produced in this proceeding demonstrates that DRA's concerns regarding PG&E's implementation of the PSEP are well-founded.⁵⁴ PG&E revelations are not limited to Line 147/Segment 109. Once PG&E began to seriously review its data on Line 147 it discovered many other basic data errors that should have been discovered in its prior MAOP validation efforts.⁵⁵

In sum, PG&E still does not know what is in the ground, and its records are still a mess; its claims to the contrary are false.⁵⁶ The Commission must take proactive steps to require PG&E to produce a comprehensive QA/QC plan for all aspects of the PSEP, and

⁵³ Among other things, PG&E has asserted that the evidentiary record in this OSC was closed prior to September 25, 2013: "The evidentiary record was closed on the Rule 1.1 OSC." (September 25, 2013 e-mail with time stamp of 8:16 p.m. from Alejandro Vallejo (PG&E Attorney) to Darryl Gruen (SED Attorney)). PG&E is wrong. Pursuant to an ALJ ruling at the OSC hearing, the record for this OSC will not be closed until the filing of replies:

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

16A RT 2415: 16-24.

⁵⁴ See Motion Of The Division Of Ratepayer Advocates For A Ruling Directing Pacific Gas And Electric Company To Provide Quality Assurance And Quality Control Plans For The Development And Implementation Of Its Updated Pipeline Safety Plan ("PSEP"), R.11-02-019, July 8, 2013, included as Attachment C to the DRA Recommendation.

⁵⁵ See, e.g., Verified Statement ¶¶ 39-49.

⁵⁶ See, e.g., Pacific Gas And Electric Company's Response To Motion Of The Division Of Ratepayer Advocates For A Ruling Directing Pacific Gas And Electric Company To Provide Quality Assurance And Quality Control Plans For The Development And Implementation Of Its Updated Pipeline Safety Enhancement Plan, R.11-02-019, July 23, 2013.

to appoint an Independent Monitor to oversee all aspects of PSEP implementation, including PG&E's compliance with the QA/QC plan. Absent such structural safeguards, it is clear that PG&E's continued independent implementation of the PSEP threatens public safety.

Respectfully submitted,

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October 1, 2013