

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)

**SAFETY AND ENFORCEMENT DIVISION'S REPLY COMMENTS ON
ADMINISTRATIVE LAW JUDGE BUSHEY'S
RULE 1.1 PROPOSED DECISION**

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure ("Rule" or "Rules"), the Safety and Enforcement Division ("SED") submits these comments on the Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Bushey Imposing Sanctions on Pacific Gas and Electric Company ("PG&E") for violations of Rule 1.1.

SED's comments address three points set forth in PG&E's Opening Comments to the Rule 1.1 Proposed Decision. First, the most on-point decision PG&E cites for its assertion that the violating party has the burden of proof in a Rule 1 proceeding also provides that a utility should promptly communicate with the Commission to correct the errors it earlier provided the Commission. Second, the Commission has easily shown in this case that PG&E violated Rule 1.1 of the Commission's rules of practice and procedure. PG&E's opening comments do not dispute that the Commission has met its burden. Third, contrary to PG&E's assertions, PG&E received proper notice of the violations in the PD because they are included in the scoping memo. Finally, in spite of its recommendation, SED defers to the Commission to make the final decision as to the

appropriate amount to fine PG&E for its Rule 1.1 violations. Each of these shall be addressed in turn.

I. WHEN A UTILITY DISCOVERS IT HAS PROVIDED ERRONEOUS INFORMATION TO THE COMMISSION, IT MUST PROMPTLY COMMUNICATE WITH THE COMMISSION TO CORRECT THOSE ERRORS

PG&E claims that “The party asserting a violation of Rule 1 must prove the violation by a preponderance of the evidence.”¹ However, the most applicable case to the present one cited by PG&E to support this notion also provides that if a utility discovers that information it has communicated to the Commission is in error, the utility should promptly communicate with the Commission to make appropriate corrections.² In this instance, PG&E failed to promptly communicate with the Commission to correct the errors to the Pipeline Features List it had provided once it discovered them.

II. THE COMMISSION HAS MET ITS BURDEN OF PROOF IN SHOWING THAT PG&E HAS VIOLATED RULE 1.1

PG&E claims that the OSC proceeding impermissibly shifted the burden of proof to PG&E.³ However, the burden of proof in this proceeding has been met by the prosecuting parties. Through evidence in the record and current Commission decisions, each of the following points has been established, which is more than enough to establish that PG&E violated Rule 1.1.

- In 2011, PG&E verified that it validated the Maximum Allowable Operating Pressure (“MAOP”) of Line 147 and that it was safe to operate at 365 psig. (D. 11-12-048, pp. 8-9.)
- In December, 2011, the Commission relied upon PG&E’s verification in deciding to allow PG&E to increase the MAOP on Line 147 to 365 psig. (Ibid. P. 9.)

¹ R.11-02-019, PG&E Opening Comments, Page 2.

² D.04-04-065, 2004, P. 38;

³ R.11-02-019, PG&E Opening Comments, Page 2.

- By early November, 2012, after the Commission’s decision allowing PG&E to increase MAOP on Line 147 to 365 psig, PG&E discovered a discrepancy between its Pipeline Features List and field observations of Line 147. (9/6/2013 Tr. Vol. B, P. 2474.)
- PG&E discovered the discrepancy between the PFL and the field information because of a leak it discovered in the field in October of 2012. Verified Statement of Pacific Gas and Electric Company’s Vice President of Gas Transmission Maintenance and Construction in Response to Ruling of Assigned Commissioner and Administrative Law Judge (“Verified Statement”), August 30, 2012, Page 7, Paragraph 27.
- PG&E waited until July 3, 2013 to disclose the discrepancy to the Commission as a body. (R.11-02-019, Ruling of Chief Administrative Law Judge and Assigned Administrative Law Judge Directing Pacific Gas and Electric Company to Show Cause Why It Should Not Be Sanctioned by the Commission for Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure, 8/19/2013, Page 1.)
- PG&E’s own verified statement on August 30th explained the delayed reporting of the discrepancy, but did not inform the Commission that it hydrottested Line 147 at more than 100% SMYS, in violation of its own requirements. (R.11-02-019, OSC November 18, 2013 Hearing Exhibit O, P. 12.)
- PG&E’s own verified statement did not inform the Commission that certain of its engineers were concerned that the hydrotesting could have damaged Line 147. (R.11-02-019, OSC November 18, 2013 Hearing Exhibit N, P. 1).

III. PG&E RECEIVED PROPER NOTICE OF THE VIOLATIONS IN THE PROPOSED DECISION BECAUSE THE OSC PROPERLY SCOPED THEM

PG&E asserts that, the PD would, without notice, impose a \$5.25 million penalty based on its delay between March 20, 2013 and July 3, 2013.⁴ PG&E's assertion is patently and demonstrably false. In fact, the Order to Show Cause explicitly noted on August 19th that PG&E delayed 18 months after the Commission's decision allowing it to restore pressure on Line 147 before it attempted to correct its application for that pressure restoration.⁵ Later, PG&E disclosed that it found a leak on Line 147 on October 18th, 2012.⁶ No later than early November 2012, PG&E discovered a discrepancy between certain specifications on its Pipeline Features List and the pipe it found at the location of the leak.⁷ This timeline of events makes clear that PG&E was delinquent in disclosing this discrepancy for approximately eight months before filing its July 3 errata. The Commission's OSC scoping memo notified PG&E that the Commission contemplated delay as part of the Rule 1.1 violation.

IV. SED DEFERS TO THE COMMISSION TO MAKE THE FINAL DECISION AS TO THE APPROPRIATE AMOUNT TO FINE PG&E FOR ITS RULE 1.1 VIOLATIONS IN THIS MATTER

PG&E suggests the PD is an excessive fine of PG&E, claiming that the PD "would penalize PG&E 90 times the amount proposed by the Commission's own Safety and Enforcement Division ("SED")."⁸ SED's proposal is merely that, a proposal –

⁴ R.11-02-019, PG&E Opening Comments, Pages 2-3.

⁵ R.11-02-019, Ruling of Chief Administrative Law Judge and Assigned Administrative Law Judge Directing Pacific Gas and Electric Company to Show Cause Why It Should Not Be Sanctioned by the Commission for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure, 8/19/2013, Page 4.

⁶ Verified Statement of Pacific Gas and Electric Company's Vice President of Gas Transmission Maintenance and Construction in Response to Ruling of Assigned Commissioner and Administrative Law Judge ("Verified Statement"), August 30, 2012, Page 7, Paragraph 27.

⁷ 9/6/2013 Tr. Vol. B, P. 2474.

⁸ R.11-02-019 PG&E Opening Comments, Page 2.

nothing more. SED recognizes the Commission has the final say in levying a fine on PG&E.

V. CONCLUSION

For all of the reasons discussed above, PG&E has not properly identified legal or factual errors with the PD.

Respectfully submitted,

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