

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)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON
PROPOSED DECISION IMPOSING SANCTIONS ON PACIFIC GAS AND
ELECTRIC COMPANY FOR VIOLATION OF RULE 1.1 OF THE
COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

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I. OVERVIEW

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) files these Comments on the Proposed Decision (PD) of Administrative Law Judge (ALJ) Bushey, imposing sanctions on Pacific Gas and Electric Company (PG&E) for violation of Rule 1.1 of the Commission Rules of Practice and Procedure (Rule 1.1).

These comments focus on factual, legal, and technical errors in the PD be as required by Rule 14.3. In sum, the PD correctly determines that PG&E has violated Rule 1.1 and that "[t]he Commission should impose the maximum fine on PG&E for its actions"¹ At the same time, the PD fails to hold PG&E management accountable for its failure to timely and clearly notify the Commission of the substantive data errors that it discovered regarding Line 147. As set forth in Commissioner Ferron's Alternate PD (APD) mailed on November 4, 2013, PG&E's violation began no later than November 16, 2012, the day that several PG&E managers clearly knew of the data error and the need to reduce the Maximum Allowable Operating Pressure (MAOP) on Line 147. The PD finds that PG&E's violation began *five months later*, on March 20, 2013, the day that PG&E claims to have (1) completed its own "investigation" of Line 147 and (2) reported the errors to the Commission's Safety and Enforcement Division (SED). The PD finds that the March 20 date is appropriate because "PG&E stated that it had completed its investigation of the correction to the Line 147 pipeline features by March 20, 2012, when it presented the correction to Commission staff."² The PD does harm to the regulatory process by accepting these flimsy and not very credible excuses.

In making these findings, the PD commits both legal and factual error, resulting in a proposed fine that is less than half the appropriate penalty to PG&E. First, there is no legal basis for concluding that a utility need not correct a material misstatement to the Commission until it has completed its own investigation of the matter. In fact,

¹ PD, Conclusion of Law 3, p. 15.

² PD, p. 9.

Commission decisions suggest the very opposite.³ Second, there is no factual basis for concluding either (1) that PG&E concluded its investigation of the Line 147 data errors on March 20, 2013 or (2) that PG&E notified SED of those data errors on March 20, 2013. To the contrary, the record shows that PG&E senior management knew no later than November 16, 2012 that the MAOP of Line 147 needed to be lowered, and that the remaining PG&E “investigation” was related to its legal interpretation of 49 CFR 192.611, and identifying which pipelines would be impacted by its changed view of that regulation. Thus far, PG&E has failed to adequately explain how or why its changed interpretation of 49 CFR 192.611 is relevant to setting the MAOP for Line 147. Further, there is nothing in the record that supports PG&E’s claim that it notified SED of the data errors in Line 147 or the changed MAOP for that line in its March 20, 2013 communication with SED.

Finally, the PD fails to consider the remedy proposed by both ORA and the City of San Bruno many months ago to ensure that in the future, critical safety-related information about PG&E’s gas system -- such as the need to reduce the MAOP on Line 147 -- is promptly and accurately reported to the Commission, to the parties in this Gas Safety proceeding, and to local authorities in potentially affected communities.⁴ That proposed remedy is to engage an Independent Monitor to publicly report on PG&E’s implementation of its Pipeline Safety Enhancement Plan (PSEP) so that critical information is disclosed in a timely manner. A stepped-up level of Commission oversight of PG&E’s PSEP implementation is needed to ensure the safety of PG&E’s gas transmission system.

³ See, e.g., note 9, below. Note 7 cites to SED brief. If that was the intent OK but we should add cites to Commission decisions.

⁴ ORA Opening Brief, pp. 2-3, 17-18; San Bruno Opening Brief, p. 11; ORA Reply Brief, pp. 3, 12-13, 16-17; San Bruno Reply Brief, p.11.

II. THE PROPER DATE RANGE FOR CALCULATING THE FINE FOR FAILURE TO NOTIFY IS NOVEMBER 16, 2012 TO AUGUST 30, 2013

A. Legal Error

There is no basis in fact, law, or precedent for the Commission to start counting a utility violation from the day the utility represents that it concluded its own internal investigation into the error and reported the error to Commission staff. In fact, calculating a violation from such a date encourages utilities to withhold information from the Commission indefinitely, and then to disclose it at their convenience to staff, rather than in the appropriate public forum. Such a policy is inconsistent with prior Commission holdings that a utility must timely provide data to the Commission and that utility withholding of information harms the regulatory process.⁵ Here, the evidence shows that PG&E executives were well aware of the Line 147 data error no later than November 16, 2012, yet the PD refuses to hold those executives accountable for the failure to report the errors to the Commission by starting the clock on the violation on March 20, 2013. The PD also ignores the very relevant observations by both ORA and SED that PG&E misled the Commission by withholding newly discovered information regarding errors in its record keeping for close to nine months until the Recordkeeping Investigation (I.11-02-016) was fully briefed and submitted.⁶ Finally, the PD fails to acknowledge the fact that SED had a standing data request for in the Recordkeeping Investigation for PG&E to provide it notice “concerning potential errors in PG&E’s MAOP validation process.”⁷ In short, the record does not support any of PG&E’s excuses for delaying for months the reporting of information critical to public safety.

⁵ See, e.g., note 9, below. See also *Sprint PCS*, D.01-08-019, pp. 3-4, 9-11, 23 (a delay in withholding necessary disclosures from the Commission stimulates the “general policy of according a high level of severity [as a] violation that harms or undermines the regulatory process”); and *Bay Area Telephone Co.*, D.94-11-018, pp. 9, 12-13, 83-85 (a company’s delay of several months to file required permits with the Commission impeded the Commission’s expectations to timely receive the permits, which obstructed telecommunications transmission and justified the Commission’s Rule 1 sanctions).

⁶ See, e.g., SED Opening Brief, p. 14; ORA Opening Brief, pp. 8-10; and ORA Reply Brief, p. 12.

⁷ SED Opening Brief, pp. 2-3.

The APD properly corrects these errors in the PD by recognizing that the violation began no later than November 16, 2012, when PG&E executives clearly knew of the error and its significance, yet failed to notify the Commission of the error. The APD correctly states, consistent with the record:

We are not privileged to PG&E's decision-making process but it is clear that the serious records discrepancies and pipeline flaws were known by the senior management of PG&E and they must have recognized this as a significant safety matter in the public's interest. Instead of reporting this to the Commission promptly, these individuals chose to wait several months to correct information that they knew to be false and that they knew the Commission relied upon. We simply cannot tolerate such deliberate and calculated dishonesty -- behavior which clearly represents an "artifice" as the term is used in Rule 1.1.⁸

These findings of fact are inescapable based on the record in this proceeding. The conclusion is consistent with Commission precedent which does not permit a utility to determine when it will disclose material information to the Commission.²

The APD further finds that PG&E's violation in failing to inform the Commission was not corrected until August 30, 2013, when PG&E filed the Verified Statement which more fully described the circumstances surrounding the discovery of the data error and admitting that it first knew of the error in mid-October. The APD correctly concludes that "[t]his unreasonable delay in correcting a known error in a significant and material

⁸ APD, p. 11, with the citation to note 11 eliminated. That note reads: "As the Office of Ratepayer Advocates points out in its October 1, 2013 Reply Comments, the Commission's investigation into PG&E's recordkeeping practices (Investigation 11-02-016) was active and ongoing at the time this error was discovered, and thus the errors were a material fact that should have been timely disclosed in that proceeding."

² See, e.g., *Sprint PCS*, D.01-08-019, *mimeo*, at 16; see also *Id.* at 18. Among other things, 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," yet PG&E ignored its obligation to notify CPSD of any errors in its MAOP validation process in response to this data request. 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."

factual representation to the Commission had the effect of misleading the Commission and the public for each day that PG&E allowed the erroneous information to persist.”¹⁰

Finally, the APD recognizes the possible impact PG&E’s withholding had on the Recordkeeping Investigation:

As the Office of Ratepayer Advocates points out in its October 1, 2013 Reply Comments, the Commission’s investigation into PG&E’s recordkeeping practices (Investigation 11-02-016) was active and ongoing at the time this error was discovered, and thus the errors were a material fact that should have been timely disclosed in that proceeding.¹¹

The PD should be modified, consistent with the language in the APD, to correct its legal errors.

B. Factual Error

The PD fails to identify record evidence that affirms either (1) that PG&E had completed its investigation of the Line 147 pipeline features by March 20, 2012, or (2) that PG&E had presented this correction to SED on that date. In fact, the date appears to be pulled out of thin air on the basis that PG&E had a conference call with SED on that date. Mr. Malkin’s testimony on the “investigation” issue reveals that the focus of that investigation was on PG&E’s understanding of 49 CFR §192.611 and its impact on the MAOP of certain lines.¹² Nothing in the record suggests that the investigation into the *pipeline features* of Line 147 continued up to March 20, 2012. Nor does the record

¹⁰ APD, p. 12.

¹¹ APD, p. 11, note 11.

¹² 16A RT 2352: 1-17 (PG&E/Malkin):

As is set forth in Mr. Johnson's verified statement, he describes the discovery of the errors on Line 147 and how that led then to a reassessment, if you will, of the so-called "one class out rule," which would have allowed these various pipelines to operate as they were because of the hydrotest. And part of that initial review of that issue identified a similar potential issue with a segment of Line 131, which was the subject of one of our other pressure restoration applications. And as Mr. Johnson describes, it was not until July 2nd that the gas organization was able to finally resolve that issue and determine that there wasn't the same issue on Line 131. We then went ahead and filed as quickly as we could

suggest that PG&E’s investigation into the application of 49 CFR § 192.611 was completed on March 20 – PG&E’s testimony reflects it was completed on July 2, 2013 - or that such an investigation was even relevant to the data errors discovered in Line 147. Further, given that PG&E continues to excavate segments of Line 147 to verify the pipelines features,¹³ the logic of the PD would suggest that PG&E’s violation does not begin to run until *all* of PG&E’s work is done, and that day has not yet come.

The APD recognized these same problems. It concludes that PG&E’s excuse for the delay based on its need to resolve issues regarding 49 CFR 192.611 “is not credible.”¹⁴ It stated: “Regardless of whether there might have been a possible exception [from 49 CFR 192.611], PG&E should have reported the records discrepancy immediately.”¹⁵

With regard to the PD’s assumption that PG&E actually informed SED of the Line 147 errors on March 20, 2013 – that remains an open question. Mr. Johnson’s Verified Statement and the testimony in both of the September 6, 2013 hearings were ambiguous regarding what, exactly, was communicated to SED on March 20, 2013 – and whether

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¹³ ORA staff were eyewitnesses to such an excavation of Line 147 on November 4, 2013. PG&E staff at the investigation reported to the ORA Staff that the excavation was to confirm pipeline features of that segment, which they reported was segment 110 of Line 147.

¹⁴ APD, p. 14.

¹⁵ APD, pp. 14-15.

the communication actually included specific information about the Line 147 data errors. ORA immediately issued a data request to SED to clarify this point.¹⁶ However, SED refused to answer the data request.¹⁷

Evidently, Commissioner Ferron is similarly troubled by the record on this issue. It finds that PG&E failed to establish that its March 20, 2013 communication with SED provided adequate notice of the Line 147 errors:

PG&E's Lead Counsel testified, with reference to the Verified Statement, that PG&E had a conference call with a member of Safety and Enforcement Division staff on March 20, 2013 (Transcript at 2356). During that call, application of a one-class-out analysis to Lines 147 and 101, and corrected pipe specifications for Line 147 were discussed, among other topics. However, perusal of the two-page handout for that call (attached to the Verified Statement) contains only one cryptic phrase that might refer to record discrepancies for Line 147: "2 sections of newly discovered pipe specifications less than expected." PG&E has not established

¹⁶ The specific question on this point was Question 1(f), as follows:

Do you believe that the following testimony by PG&E accurately describes PG&E's communications with you regarding the Line 147 recordkeeping errors? Specifically, did PG&E notify you of the Line 147 recordkeeping error, how it was discovered, and what it did to address that error? If so, please explain the date that PG&E provided that information to you, your recollection of what PG&E told you about this error, and your recollection of your response to PG&E regarding this error.

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

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

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

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

Q Yes.

A Yes, according to what Mr. Johnson has said. (16A RT 2380:4-22 (PG&E/Malkin)).

¹⁷ SED refused to answer the data request on the basis that it was not a party to the proceeding and that the data request sought information protected by the deliberative process privilege. In actuality, the data request sought information to confirm or refute PG&E's characterization of its communications with SED, which are not privileged in any manner.

that the March 20, 2013 conference call provided adequate notice to the Commission or our staff regarding the errors in Line 147 specifications and the need to modify D.11-12-048.

In sum, the PD has erred both legally and factually to reach its conclusion that PG&E's Rule 1.1 violation for failing to timely notify the Commission of the Line 147 data errors began on March 20, 2013 and concluded on July 3, 2013, when it attempted to file the *errata*. The proper starting date for calculating the fine for PG&E's failure to notify the Commission is November 16, 2012, when PG&E executives clearly knew of the error and its significance. The proper end date is August 30, 2013, when PG&E corrected the notification errors in its Verified Statement by providing the details necessary for the Commission and the public to understand the significance of PG&E's data errors.

III. THE PD FAILS TO RECOGNIZE THE NEED FOR MORE OVERSIGHT OF PG&E'S GAS OPERATIONS IN ADDITION TO A FINE

PG&E projects that PSEP Phases 1 and 2 will cost more than \$6.8 billion.¹⁸ The majority of this work is necessary because PG&E has failed, over multiple decades, to maintain accurate records of its gas transmission pipeline system. It is imperative that the new PSEP work being performed by PG&E be done right, and that PG&E maintain accurate records from that work going forward. However, all indications are that this is not happening.

The Segment 109 data error is not an isolated incident. As ORA explained in its Opening Brief in this matter, after discovering the errors regarding Segment 109 of Line 147, PG&E conducted a review of the remaining Line 147 data. That review revealed a number of troubling recordkeeping errors.

¹⁸ PG&E has estimated that Phase 2 of will cost between \$6.8 billion and \$9 billion. See the record in the PSEP proceeding, Ex. 149, DRA Testimony, Chap. 9, p. 2 and note 5.

First, PG&E admits that several other segments in Line 147 that were characterized as seamless in 2011 were actually Single Submerged Arc-Welded (“SSAW”).¹⁹ The Verified Statement reveals that an engineer had noticed this inconsistency in 2011, but that the data – which was used to validate the MAOP for PG&E’s October 2011 filing supporting the Operating Pressure Decision - continued to contain the error until it was re-discovered in the November 2012 “re-look” triggered by identification of the Segment 109 data error.²⁰

Second, notwithstanding PG&E’s unequivocal representations in the afternoon OSC hearings that it routinely updates its data with field information,²¹ the Verified Statement reveals that PG&E has failed – until very recently - to do so. In the Verified Statement PG&E admits that several other segments in Line 147 - which were previously characterized as a seam type of “unknown” - were changed after March 5, 2013 to accurately reflect the type of pipe in the ground, consistent with the evidence gleaned from the 2011 hydrostatic test on those segments.²² Thus, while PG&E had access to field information from the 2011 hydrostatic test of Line 147, it failed to incorporate that information into its database *until this year*, and may not have incorporated it at all but for the leak on Segment 109.

This evidence of PG&E’s failure to update its records with field information is directly contrary to PG&E representations made throughout the Recordkeeping

¹⁹ Verified Statement, ¶¶ 39-42.

²⁰ Verified Statement, ¶ 39.

²¹ See 16B RT 2446:1-13 (“every time we open up a pipe either to do strength test or for some other operational purposes, we have an opportunity to obtain knowledge about our assets. That's exactly what happened on Line 147”); 2488-2489: 24-10 (“So when we're doing a repair, any time we excavate a pipeline, we will go in and take a look at that pipeline and validate the information that we have. So whether we do it for a leak repair or for opening up for construction reasons, say, to tie a pipeline in to do a pressure test or to do a dig just to do our integrity management system, all of those digs, if you will, all those excavations result in information about the pipeline that is fed back into our information management system so that we constantly keep it up to date and it gives us additional pieces of information.”); and 2493:16-22 (“as we dig up pipe, we may indeed find where our records say one thing and it's something else -- we will be looking for mechanisms in our effort to continuously get better ...”).

²² Verified Statement, ¶¶ 43-47.

Investigation, including representations to the National Transportation Safety Board (“NTSB”)²³ and representations that PG&E made to this Commission on September 6, 2013. The Commission cannot continue to ignore the fact that PG&E’s actions continue to be inconsistent with its representations to this agency.

Given the extensive evidence of PG&E’s poor track record for both data management and quality assurance and quality control (QA/QC) – and with no assurance that PG&E’s decades of poor work practices would cease as a result of the San Bruno explosion - ORA has repeatedly advocated for the Commission to hire an independent monitor to oversee all aspects of PG&E’s PSEP implementation,²⁴ and to require PG&E to produce a comprehensive QA/QC plan.²⁵ Both of these requests have been met not with rejection, but with silence. There has not even been an acknowledgement that the proposals have been made.

PG&E’s Rule 1.1 violations reveal significant safety concerns regarding PG&E’s recordkeeping and reconstruction of its gas pipeline system that starkly demonstrate the need for the Commission to take an active and transparent role in overseeing the reconstruction of PG&E’s gas transmission network and the repopulation of its gas transmission database. The situation the Commission faces today might have been prevented by implementation of an effective QA/QC Plan, use of an Independent

²³ See, NTSB Report, p. 109 (“At the NTSB investigative hearing, PG&E officials testified that if discrepancies between GIS data and actual conditions are discovered by field personnel, field engineers are required to report them to the mapping department, which validates the information. However, the documents provided to the NTSB indicate that PG&E does not use the ECDA process for validating assumed values, determining unknown values, or correcting erroneous values.”). See also, DRA Opening Brief in the Recordkeeping Investigation, I.11-02-016, May 25, 2013, pp. 27-39.

²⁴ DRA’s independent monitor proposal has been articulated in virtually all of the San Bruno-related proceedings. See DRA Opening Brief on Fines and Remedies in I.11-02-016, et seq., May 6, 2013, pp. 36-40, attached to its Opening Brief in this Rule 1.1 OSC proceeding as Attachment A, for the most recent iteration of that proposal. See also, DRA Comments on Proposed Decision, R.11-02-019, November 16, 2012, pp. 14-16; DRA Opening Brief, I.11-02-016, March 25, 2013, pp. 21-25; and DRA Opening Brief, I.12-01-007, March 11, 2013, pp. 61-66 for other iterations of the proposal.

²⁵ See DRA Motion For QA/QC Plan, filed in this docket on July 8, 2013, pp. 3-5, and attached to its Opening Brief in this Rule 1.1 OSC proceeding as Attachment C.

Monitor, or both. Both mechanisms would have contributed to the *earlier detection* of the error and *earlier reporting* of the error to the Commission and the public.

IV. CONCLUSION

The Proposed Decision properly concludes that PG&E has violated Rule 1.1. However, it fails to properly calculate the duration of that Rule 1.1 violation, and the resulting fine. For the reasons set forth herein, in ORA's prior briefs in this proceeding, and in the Alternate Proposed Decision mailed on November 4, 2013, the Findings of Fact and Conclusions of Law contained in the Proposed Decision should be modified as provided in Appendix A to these comments.

Further, the facts revealed in this Rule 1.1 Order to Show Cause proceeding, and in the companion Order to Show Cause regarding the MAOPs, demonstrate that PG&E has a long way to go in developing a functional safety culture, and that there is reason for concern about whether PG&E is properly implementing the PSEP. When it comes to the PSEP, it is necessary for the Commission to employ a more active form of oversight than is ordinarily required.

ORA has proposed in several venues, including at least twice in this docket, that the Commission hire an Independent Monitor to ensure that PG&E properly implements its PSEP and to report regularly and publicly on its findings. ORA has also filed a motion in this docket asking the Commission to require PG&E to provide a comprehensive QA/QC plan for its PSEP implementation. That motion was attached to ORA's Opening Brief in this matter as Attachment C. If these two proposals were

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implemented, data errors like the ones identified in these Order to Show Cause proceedings would be more likely to be identified and brought to the Commission's and the public's attention promptly.

Respectfully submitted,

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