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 UTILITY REFORM NETWORK ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BUSHEY IMPOSING SANCTIONS FOR VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

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I. INTRODUCTION

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

The PD correctly finds that PG&E violated Rule 1.1 by: (1) delaying in correcting the record regarding the pipeline features and maximum allowable operating pressure ("MAOP") for Line 147; and (2) finally presenting these errors in a document that was misleadingly and inappropriately titled "Errata." These conclusions closely track the analysis in TURN's opening brief on this matter and are well supported both factually and legally. TURN will not repeat its arguments on these issues but will rather refer the Commission to its briefs.[1]

However, as explained below, the PD errs in its determination of the number of violations and thus would adopt a total sanctions amount that is too low. In contrast, the Alternate Proposed Decision of Commissioner Ferron ("APD") presents a well-supported analysis and computation of the number of violations and would order an appropriate level of monetary sanctions. In short, TURN supports the Ferron APD as imposing the correct and legally supported sanctions for PG&E's egregious violations of Rule 1.1.[2] PG&E blatantly misled the Commission when it failed to timely disclose an embarrassing and material error in the documentation it had previously supplied to the Commission regarding the safe operating pressure for Line 147 – an error that caused the Commission to approve an excessive operating pressure for that line.

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[1] TURN Opening Brief on Rule 1.1 Violations, Sept. 26, 2013; TURN Reply Brief, Oct. 1, 2013.
[2] TURN will submit its comments on the Ferron APD on the due date for those comments, November 25, 2013.

II. THE PD ERRS IN FAILING TO CORRECTLY IDENTIFY THE DATE BY WHICH PG&E SHOULD HAVE CORRECTED THE RECORD

The PD states that PG&E's "unreasonable delay in correcting a known error in a significant and material 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."[3] The PD then concludes that PG&E violated Rule 1.1 each day the company failed to correct "known errors" in the Supporting Information regarding Line 147 that it had previously filed with the Commission. Under this analysis, with which TURN generally agrees, the starting date for the violation period – and hence the number of violations under Section 2108[4] -- should be determined by the date that PG&E knew of the errors and could reasonably be expected to present a filing informing the Commission and the public of PG&E's errors. However, this is the not the date the PD uses to fix the start of the violation period.

Instead, the PD finds that the violation period should start on March 20, 2012, which the PD describes as the date that "PG&E stated that it had completed its investigation of the correction to the Line 147 pipeline features" and "presented the correction to Commission staff."[5] In contrast, the Ferron APD finds, based on the testimony of Kirk Johnson, the responsible PG&E Vice President,[6] that PG&E managers were aware of the discrepancy and the potential "significant safety risk" on or before November 16, 2012,[7] a date more than 120 days before the starting date identified by the PD.

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[3] PD, pp. 8-9.
[4] All statutory references are to the Public Utilities Code unless otherwise indicated.
[5] PD, p. 9.
[6] Mr. Johnson was the "Responsible Engineer" who had previously certified the accuracy of the Line 147 pipeline features information that was reported to the Commission in 2011 and relied upon in D.11-12-048. D.11-12-048, p. 8.
[7] Ferron APD, p. 12.

The Ferron APD is correct and the PD is incorrect regarding the date by which PG&E could and should have informed the Commission and parties of its serious error. The Verified Statement of Mr. Johnson states that, in mid-October 2012, PG&E engineers learned that the seam weld on Segment 109 was not DSAW, as indicated in the MAOP validation documents submitted to the Commission, but rather A.O. Smith pipe with an inferior seam weld.[8] Mr. Johnson's Verified Statement then states that, *on November 14, 2012*, the fact that PG&E's pipeline features information for Segment 109 was incorrect was reported by e-mail to various PG&E departments, including MAOP Validation, Integrity Management, Operations, PSEP, Hydrotest, and Gas Planning.[9] Mr. Johnson further attests that, based on that November 14, 2012 e-mail, PG&E revised its MAOP validation documentation for Segment 109, lowering the MAOP for that segment from 430 psig to 330 psig.[10] In addition, Mr. Johnson's statement explains that, "in mid-November of 2012", PG&E decided to do a re-review of the entire MAOP documentation for Line 147,[11] further evidence that PG&E's management was fully aware at that time of the seriousness of the error regarding Segment 109 and recognized the need to determine if there were other MAOP errors for Line 147 (which indeed proved to be true). Finally, in his oral testimony at the September 6, 2013 hearing, Mr. Johnson testified that he knew of the discrepancy between PG&E's previous submission to the Commission and the actual features of Line 147 by late October or early November of 2012 and that he received the November 14, 2012 e-mail referenced in his Verified Statement.[12]

[8] Verified Statement, August 30, 2013, pars. 27-28.
[9] *Id.*, par. 33.
[10] *Id.*, par. 38.
[11] *Id.*, par. 39.
[12] Vol. 16B, Reporter's Transcript (RT), pp. 2474-2475 (PG&E/Johnson).

Thus, based on undisputed evidence, the record supports the Ferron APD's November 16, 2012 date – and not the PD's March 20, 2012 date -- as the date by which PG&E should have corrected the record and notified the parties and public of its error. Nothing in the record supports the PD's implicit finding that PG&E had a defensible reason to wait until March 20, 2013 to correct the record. As the Ferron PD correctly recognizes, by November 16, 2012, PG&E had all the information it needed to know that it had made a serious error that needed to be corrected in the record. Under the PD's own standard, because PG&E allowed "known errors" regarding Line 147 to "persist" beginning no later than November 16, 2012, that date should establish the start of the violation period.

Moreover, the PD would send a confused message regarding the importance of correcting such significant errors as soon as reasonably possible. Notwithstanding the PD's correct conclusion that PG&E committed violations each day it allowed a known error to persist, the PD's application of that conclusion would let PG&E off the hook for more than 120 days of violations during which PG&E knew of the error and failed to correct the Commission's record. The Commission needs to be clear that compliance with Rule 1.1 requires utilities to correct such errors when they become aware of them and that delays in correcting the record will not be tolerated.

III. CONCLUSION

For the reasons set forth above and in TURN's previous briefs on these issues, the Commission should adopt the Ferron APD, which has the correct analysis and computation of PG&E's violations for its inexcusable delay in correcting the Commission's record regarding the features and MAOP of Line 147.

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Respectfully submitted,

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