

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)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON
THE ALTERNATE PROPOSED DECISION OF COMMISSIONER FERRON
IMPOSING SANCTIONS FOR VIOLATION OF RULE 1.1
OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE



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I. THE FERRON ALTERNATE IS FULLY SUPPORTED BY EVIDENCE IN THE RECORD OF THE RULE 1.1 ORDER TO SHOW CAUSE PROCEEDING

A. PG&E's Own August 30, 2013 Verified Statement Supplies Ample Evidence Demonstrating the Rule 1.1 Violations

PG&E claims that, by citing the September 6, 2013 afternoon oral testimony of PG&E Vice President Kirk Johnson, the Ferron Alternate Proposed Decision (“APD”) impermissibly relies on evidence outside the record of the Rule 1.1 Order to Show Cause (“OSC”) proceeding.¹ This argument has no merit.

PG&E elevates form over substance. The citation to which PG&E objects is the testimony of *its own officer*, Mr. Johnson, in response to questions by Commissioner Ferron *following up on statements in Mr. Johnson's August 30, 2013 Verified Statement*.² Because the Verified Statement is in the Rule 1.1 record, as PG&E acknowledges,³ Commissioner questions relating to that Statement should also be considered part of the record. In his testimony, Mr. Johnson admitted that he became aware of the Line 147 records discrepancy in “either late October” or “early November, shortly after the leak was found and dug up.”⁴ PG&E does not claim that Mr. Johnson’s testimony was incorrect and thus cannot identify any prejudice from Commission reliance on the testimony of its own officer.

In any event, Mr. Johnson’s Verified Statement supplies all the evidence that is necessary to support the APD’s findings. That Statement acknowledges that, *on November 14, 2012*, the fact that PG&E’s pipeline features information for Segment 109 was incorrect was reported by widely circulated e-mail to various PG&E departments, including MAOP Validation, Integrity Management, Operations, PSEP, Hydrotect, and Gas Planning.⁵ In this respect, the APD is conservative because November 14, 2012 is two days *before* the date the APD assigns knowledge of the errors to PG&E’s senior management. 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.⁶ In addition, Mr. Johnson’s

¹ PG&E Comments on Ferron APD, p. 4.

² Commissioner Ferron made clear that he was following up on the detailed “timeline of events surrounding Line 147” in the Verified Statement. 16B Reporter’s Transcript (RT), p. 2474.

³ See PG&E Comments on Ferron APD, p. 7, fn. 25, citing the Verified Statement.

⁴ 16B RT, p. 2474.

⁵ *Id.*, par. 33.

⁶ *Id.*, par. 38.

statement explains that, “in mid-November of 2012”, PG&E decided to do a re-review of the entire MAOP documentation for Line 147,⁷ 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). Thus, even if the Commission limits itself to information in PG&E’s overly restrictive scope of the Rule 1.1 record, the APD’s findings and conclusions are still fully supported.⁸

B. The APD Correctly Finds that PG&E Concealed Its Knowledge of Errors That Required Reducing the Safe Operating Pressure of Line 147

PG&E claims⁹ that the record does not support the APD’s finding that PG&E concealed information regarding the serious discrepancy in Line 147 records and that this discrepancy could have represented a significant safety risk.¹⁰ It is disingenuous for PG&E to assert that its serious records discrepancies, even in supposedly validated records, raised no safety issues.

There is no dispute that the seam weld discrepancy PG&E discovered on Segment 109 necessitated reducing the maximum allowable operating pressure (“MAOP”) for Line 147 from 365 psig to 330 psig.¹¹ Had the leak report not led to the discovery of the incorrect and overly aggressive seam weld assumption in PG&E’s “validated” records, PG&E would have been free to operate Line 147 at pressures above the safe levels prescribed by applicable regulations and PG&E’s own policies. As the APD points out, the discovery of this records discrepancy showed that, “even after the MAOP validation effort had been completed for this pipeline, PG&E had still miscalculated the proper MAOP for a segment of high consequence pipeline.”¹²

Discovering a records discrepancy that required lowering the MAOP clearly presented a safety issue, particularly because the Commission relied on PG&E’s incorrect pipeline features information in establishing the MAOP in D.11-12-048. The APD correctly finds that PG&E’s senior management engaged in “deliberate and calculated dishonesty” when it chose to wait several

⁷ *Id.*, par. 39.

⁸ Moreover, when it has suited PG&E, the company has cited to the very same September 6, 2013 afternoon testimony that it claims is outside the record. PG&E Comments on ALJ Bushey PD, p. 11, fn. 36.

⁹ PG&E Comments on APD, pp. 4-6.

¹⁰ APD, pp. 18-19, Finding of Fact 9.

¹¹ PG&E’s attorney, Mr. Malkin, testified that the federal code required PG&E to reduce the Line 147 MAOP after discovering the seam weld error. 16A RT, p. 2350. *See also* PG&E Comments on APD, p. 9.

¹² APD, p. 10.

months to correct safety-related information that management knew to be false and that management knew the Commission had relied upon.¹³

II. THE FERRON APD SATISFIES DUE PROCESS REQUIREMENTS

A. The Evidence Shows By a Preponderance of the Evidence, If Not More Emphatically, That PG&E Violated Rule 1.1

PG&E contends that the Order to Show Cause (“OSC”) procedure impermissibly shifted the burden of proof to PG&E.¹⁴ This argument fails for at least three reasons. First, PG&E confuses its burden of production with the ultimate burden of proof.¹⁵ The August 19, 2013 OSC Ruling presented facts showing *prima facie* violations of Rule 1.1. The OSC effectively shifted the burden of production to PG&E to present facts that would show that PG&E had not committed Rule 1.1 violations. Although PG&E was required to come forth with evidence, such requirement did not necessarily impose on PG&E the ultimate burden of proof.¹⁶

Second, PG&E’s due process objection to the OSC procedure is untimely. If PG&E believed the procedure violated its due process rights, it was incumbent upon PG&E to raise its objection before the close of the evidentiary record and certainly not, in the first instance, after issuance of adverse proposed decisions. PG&E had ample opportunity to raise such objections before and after the Rule 1.1 evidentiary hearing and chose not to do so.¹⁷

Third, as discussed in the Ferron APD, the record shows that there is more than ample evidence of Rule 1.1 violations to satisfy a preponderance of the evidence standard with respect to both PG&E’s delay in correcting the record and the titling and content of the “Errata”

¹³ APD, p. 11. PG&E (pp. 5-6, 11) misleadingly cites both the “Substantive” and Rule 1.1 Order to Show Cause Rulings as supposed support for its argument that its MAOP validation error did not pose a safety issue. In fact, both Rulings made clear that the view of the Safety and Enforcement Division (“SED”) regarding the safety of Line 147 was dependent on SED’s confirmation that PG&E *had reduced the operating pressure for the line* in response to the error. (See, e.g., Ruling of Assigned Commissioner and Assigned ALJ, August 19, 2013, p. 3.)

¹⁴ PG&E Comments on APD, pp. 6-7.

¹⁵ See generally, D.87-12-067, 27 CPUC 2d 1, 21-23, distinguishing the burden of proof from the burden of production (also commonly referred to as the burden of going forward).

¹⁶ The Commission has held that the burden of proof ordinarily resting upon one party as to a disputed issue may shift to the other party when the true facts relating to the disputed issue lie peculiarly within the knowledge of the other party. D.08-08-017, p. 38.

¹⁷ Indeed, PG&E waived the opportunity to make an opening statement (16B Reporter’s Transcript (RT) p. 2341), which would have been the appropriate time to raise due process issues.

submission. Under these circumstances, the Commission fully satisfied its due process obligations concerning burden of proof.

B. PG&E Misstates the Scope of the Rule 1.1 Order to Show Cause Ruling

PG&E claims that, by finding that PG&E delayed in correcting the record, the APD would find violations that are outside the scope of the OSC.¹⁸ However, PG&E relies on an unreasonable, unduly narrow interpretation of the Rule 1.1 OSC. In fact, the OSC expressly raised the timing issue and thereby put PG&E on notice that it should put in evidence explaining the timing of the submission.¹⁹ PG&E unreasonably construes the OSC's mention of the "day before the holiday weekend" as excusing PG&E from introducing evidence to explain why it waited to file long after it discovered the pipeline features errors. In fact, the full paragraph containing the sentence PG&E references raises the issue of correcting the error 18 months after the Commission's decision. Moreover, as evidenced by their questions, Commissioners Sandoval and Ferron had no trouble recognizing that the OSC included the issue of why PG&E took so long to correct its significant error.²⁰ Likewise, as evidenced by their briefs, the non-PG&E parties also recognized that the OSC scope included the issue of PG&E's lengthy delay in correcting the record.²¹ PG&E's interpretation of the OSC is an unreasonable outlier and should be rejected.

Moreover, even if the Commission were to agree with PG&E that the utility did not receive adequate notice of such alleged offenses, PG&E has failed to show that such hypothetical error prejudiced PG&E. In reply briefs and opening comments on the PD and APD, PG&E has now had multiple opportunities to explain what probative evidence it would have offered that it has not been able to present. In none of these pleadings has it made any such showing. In fact, as discussed in Section I.A above, the undisputed evidence in PG&E's Verified Statement shows that PG&E's upper management knew about the material error in its pipeline features data no later than mid-

¹⁸ PG&E Comments on APD, pp. 1-3.

¹⁹ The OSC (p. 4) states: "Attempting to correct an application eighteen months after the Commission issued a decision appears to be an unreasonable procedural choice and could be interpreted as attempting to create an inaccurate impression of a routine correction. The timing of the attempted filing, the day before a summer holiday weekend, also raises questions."

²⁰ 16A RT, pp. 2396-2397 (Comm. Sandoval); 16A RT, pp. 2410-2411 and 16B RT, p. 2474 (Commissioner Ferron, "trying to construct a timeline")

²¹ TURN Op. Br., 9/26/13, pp. 5-9; SED Op. Br., 9/26/13, pp. 10-11; DRA Op. Br., pp. 3-10;

November 2012 and that this error required reducing the MAOP for Line 147. Any further hearing would only cement this indisputable evidence.

III. THE FERRON APD PROPERLY FINDS THAT THE FORM AND CONTENT OF PG&E'S 'ERRATA' PLEADING VIOLATED RULE 1.1

PG&E claims that its use of an “errata” submission was appropriate and that the procedural vehicles identified by the APD -- a motion to reopen the record or a petition for modification -- would have been inappropriate or unnecessary.²² PG&E’s argument splits hairs and misses the point. PG&E fails to grasp that, whatever the label, it needed to file a pleading that explained that D.11-12-048 needed to be modified because of PG&E’s material error.²³ PG&E’s errata submission did not even raise the issue of modifying the erroneous decision, let alone set in motion a process to correct it.

In addition, the APD properly finds that the content of the “errata” document was insufficient to satisfy PG&E’s Rule 1.1 duties. That document concealed the important fact that PG&E had discovered the MAOP validation errors more than eight months earlier. It also deceptively claimed that PG&E discovered the seam weld error in a “scheduled” leak survey.²⁴ Mr. Johnson has since testified that the leak survey in question was “not a scheduled survey,”²⁵ but rather in response to a call from a water utility that it was doing work near the pipeline. This false statement in the “errata” is further evidence of PG&E’s efforts to conceal the happenstance manner in which it learned of its MAOP validation error.

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Respectfully submitted,

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²² PG&E Comments on APD, pp. 8-11.

²³ TURN’s opening brief, pp. 1-4, explains in detail why PG&E is patently incorrect in arguing that D.11-12-048 did not need to be modified.

²⁴ OSC-1, p. 2.

²⁵ 18 RT, p. 2641. TURN cites this statement by Mr. Johnson at the November 18, 2013 hearing as impeachment, because it shows that the “errata” contained a statement that PG&E knew to be false.