

**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)

**RESPONSE OF THE UTILITY REFORM NETWORK TO THE
APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY
FOR REHEARING OF DECISION 13-12-053**



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I. INTRODUCTION AND SUMMARY

In accordance with Rule 16.1 of the Commission's Rules of Practice and Procedure, The Utility Reform Network ("TURN") submits this Response to the Application of Pacific Gas and Electric Company ("PG&E") for Rehearing of Decision (D.) 13-12-053. As demonstrated below, none of PG&E's arguments have merit and the application for rehearing should be denied.

II. SUBSTANTIAL EVIDENCE SUPPORTS THE FINDINGS OF RULE 1.1 VIOLATIONS

PG&E claims that, to find Rule 1.1 violations, the Commission needs to find an express intent to deceive the Commission. PG&E further contends that¹ there is no such evidence in the record. PG&E is incorrect on both counts.

The Decision correctly concludes that a Rule 1.1 violation does not require a finding of intent and cites several Commission decisions in support of this conclusion.² PG&E makes no effort to distinguish those decisions or explain why they were all wrongly decided. Moreover, in its post-hearing brief in this proceeding, even PG&E seemed to acknowledge that recklessness or gross negligence are sufficient to violate Rule 1.1.³

Even if intent is a required element, there is abundant evidence in the record from which the Commission can infer such intent. PG&E seems to believe that, when the Commission assesses PG&E's conduct, it should only consider only the words of its (one) witness and that, absent a statement from PG&E's witness that the company acted with intent to deceive, the Commission cannot find a Rule 1.1 violation. To the contrary, the Commission may and should consider the entirety of the record, including PG&E's acts and omissions. In its Reply Brief,

¹ Application for Rehearing ("AFR"), pp. 2-5.

² D.13-12-053, p. 21.

³ *Comments of PG&E*, Sept. 26, 2013, p. 3.

TURN recited the facts in the record from which the Commission could infer an intent to mislead, both with respect to PG&E's delay in correcting the record and its submission of the misleading "Errata" pleading.⁴

III. THE DECISION CORRECTLY FINDS THAT PG&E COMMITTED CONTINUING VIOLATIONS OF RULE 1.1

PG&E claims that the Decision fails to show an "identifiable starting and end point" for the failure to disclose violations. (p. 5). This argument is wrong on its face. The Decision makes clear that, with respect to the failure to disclose the erroneous information, PG&E's violation consisted of allowing a "key 'false statement of fact' to persist uncorrected."⁵ The Decision conservatively fixes the starting point for this violation on November 16, 2012, even though the record showed that PG&E's Vice President became aware of the error in late October or early November and was sent an e-mail about it on November 14, 2012.⁶ The Commission appropriately determined the end point of the violation to be July 2, 2013, the date of the "Errata" submission, which was the date that PG&E first attempted to rectify the key false statement in the formal record of the proceeding.⁷

IV. PG&E'S CONSTITUTIONAL ARGUMENTS HAVE NO MERIT

A. PG&E Was Afforded Due Process

PG&E claims that the Order to Show Cause ("OSC") did not disclose that PG&E faced potential violations for its delay in disclosing the corrected pipeline information.⁸ As the

⁴ TURN Reply Brief, Oct. 1, 2013, pp. 3-5.

⁵ D.13-12-053, p. 15.

⁶ *Id.*, p. 11.

⁷ Contrary to PG&E's claim, its private discussion with Commission staff in March 2013 did not correct its violation, because the Commission's erroneous maximum allowable operating pressure ("MAOP") determination in D.11-12-048, and the formal record on which that determination was based, were not corrected by the staff meeting.

⁸ AFR, pp. 9-10.

Decision concludes,⁹ this argument is based on an unreasonably narrow interpretation of the 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.¹⁰ 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 at the September 6, 2013 OSC hearing, 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.¹¹

Even if the OSC notice were insufficient, the Proposed Decision ("PD") and Alternate Proposed Decision ("APD") certainly put PG&E on notice that it was subject to Rule 1.1 sanctions for its delay in disclosing the erroneous MAOP. In opening and reply comments on the PD and APD (four pleadings), PG&E had ample opportunity to at least make an offer of proof as to the probative exculpatory evidence it would offer if given another chance to present evidence. In none of these pleadings did PG&E make any such showing. Moreover, at the December 2, 2013 en banc oral argument (that PG&E requested), in which it presented the testimony of its Chief Executive Officer and head of gas operations, PG&E was given another opportunity to

⁹ D. 13-12-053, pp. 20-21.

¹⁰ 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."

¹¹ 16A Reporter's Transcript (RT), pp. 2396-2397 (Comm. Sandoval); 16A RT, pp. 2410-2411 and 16B RT, p. 2474 (Commissioner Ferron, "trying to construct a timeline")

explain its long delay in disclosing its error. Again, PG&E failed to offer new evidence (or make an offer of proof) to justify its delay.

In short, PG&E was afforded ample opportunity to show why it should not be sanctioned for its long delay in disclosing the correct pipeline information, and the Commission fully satisfied its due process obligations.

B. The Maximum Statutory Fines Are Fully Warranted

PG&E claims that the fines levied in the Decision violate the Excessive Fines Clauses of the California and United States Constitutions claiming they are grossly disproportionate to the underlying violations.¹² However, PG&E flagrantly ignores the context for the fine determination and fails even to address the reasons the Decision gives for imposing the maximum statutory fines. As the Decision emphasized, in the wake of the massive and deadly San Bruno explosion, the Commission put PG&E on notice in June 2011 that “its presentations to this Commission and the public on natural gas transmission system safety must be both forthright and timely.”¹³ Despite that admonition, PG&E effectively concealed from the Commission and the parties material information showing that the MAOP for a pipeline in a congested area (not far from the San Bruno explosion) needed to be lower than PG&E had previously represented to the Commission. The underlying records errors that PG&E discovered were clearly embarrassing to the company (as evidence by the strong reaction once they were finally disclosed), particularly in light of the company’s assertions that it had put its recordkeeping woes behind it. Rather than candidly acknowledging its continuing recordkeeping problems in the spirit of the Commission’s admonition in D.11-06-017, the company chose to

¹² AFR, pp. 11-12.

¹³ D.13-12-053, p. 17 (referencing D.11-06-017).

