

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)

**JOINT APPLICATION OF THE CITY OF SAN BRUNO
AND THE OFFICE OF RATEPAYER ADVOCATES
FOR REHEARING OF DECISION 14-06-011 DECLINING TO STAY DECISIONS
AUTHORIZING INCREASED OPERATING PRESSURE**

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I. OVERVIEW

The City of San Bruno (San Bruno) and the Office of Ratepayer Advocates (ORA) (together “Joint Parties”) apply for rehearing of Commission Decision (D.) 14-06-011 (Decision) pursuant to Public Utilities Code § 1731¹ and Commission Rule of Practice and Procedure 16.1.

The Assigned Commissioner and Assigned Administrative Law Judge in this proceeding issued an Order To Show Cause on August 19, 2013 “Directing Pacific Gas And Electric Company To Appear And Show Cause Why All Commission Decisions Authorizing Increased Operating Pressure Should Not Be Stayed Pending Demonstration That Records Are Reliable” (OSC). The Decision concludes that those earlier decisions – the Pressure Restoration Orders – need not be stayed and closes the OSC proceeding.

The Joint Parties seek rehearing of the Decision first and foremost because the Decision closes the proceeding without answering the legitimate public safety question posed by the OSC. We still do not know whether the Maximum Allowable Operating Pressure (MAOP) of several gas transmission lines – re-established by several Commission decisions in 2011 and 2012 lifting pressure restrictions – were calculated based on accurate information and are therefore safe to operate.² In this OSC proceeding Pacific Gas and Electric Company (PG&E) produced updated information for Line 147, which other parties reviewed, but no information at all for the four other lines in question. The information previously provided to the Commission in 2011 and 2012 for the other lines was not re-examined, and we still do not know whether those other lines are

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

² Those lines include Lines 101, 132A, 131-30, and the line on the suction side of the Topock Compressor Station (“OSC Lines”). Those lines’ MAOPs were raised in the Pressure Restoration Orders as follows: D.11-10-010 (the line on the suction side of the Topock Compressor Station, also sometimes referred to as “Line 300”), D.11-12-048 (Lines 101, 132A, and 147), and D.12-09-003 (Line 131-30). Note that the MAOP for Line 147 was raised to 365 psig in D.11-12-048 and was reduced to 330 psig in December 2013 by D.13-12-042. That decision raising the MAOP of Line 147 also contains numerous factual and legal errors. See City of San Carlos’ and Office of Ratepayer Advocates’ Joint Application For Rehearing of D.13-12-042 Establishing Maximum Operating Pressure for Pacific Gas And Electric Company’s Nature Gas Transmission Line 147, filed January 23, 2014.

operating at the correct MAOP. Thus, the public safety concern that prompted the OSC remains unresolved.

Rehearing should also be granted because the Decision is not supported by substantial evidence. PG&E did not demonstrate that its records are reliable; the weight of the evidence shows that they are not (as the Decision correctly finds). The Decision nevertheless closes the OSC proceeding based on the fact that in the earlier proceedings (in 2011 and 2012) PG&E had certified that it had pressure tested the lines. Those prior certifications do not constitute substantial evidence for at least two reasons. First, pressure test records do not obviate the need for gas operators to maintain accurate information on pipeline features, which is also required by law. Second, even if pressure test records alone were sufficient to establish MAOP, and to operate safely (which they are not), the test records are not in the evidentiary record of Rulemaking (R.) 11-02-019, and were not offered into evidence in the OSC proceeding.

The Decision contains other legal and factual errors. The Decision improperly shifted the burden of proof to the intervenors to demonstrate that the lines in question are not safe. The OSC expressly directed PG&E to show that its records are reliable and that the MAOPs of certain lines had been established based on accurate pipeline feature information. It was appropriate to place the burden of producing that evidence on PG&E – no other entity could make that showing. But the Decision inexplicably shifted the burden of proof to the local governments and consumer intervenors, finding that “[n]o party had presented evidence that PG&E had not pressure tested” the lines³ and “no party presented evidence to support a finding of good cause to stay” the prior decisions re-establishing the MAOPs of the line.⁴ This shifting of the burden constitutes legal error.

On July 10, 2014, the Commission adopted a Safety Policy Statement in which it committed to ensuring compliance with safety laws and regulations, to “continually assess and reduce the safety risk posed by the utilities we regulate,” to “hold companies

³ Decision, p. 17, FOF 4.

⁴ Decision, p. 18, COL 2.

accountable for the safety of their facilities and practices,” and to “be accountable for the oversight of safety in the industries we [the Commission] regulate.”⁵ The Commission also committed to ensuring that its decisions address its “overarching goals and expectations regarding safety.” The Decision falls far short of the mark. The Commission should grant rehearing and require PG&E to make the showing ordered by the OSC. It should provide express direction regarding what PG&E’s showing should contain. Because the existing record is so deficient, the Joint Parties see no other way for the Commission to determine whether or not it is safe to operate the OSC Lines⁶ at their currently authorized MAOPs.⁷

II. PROCEDURAL HISTORY

The OSC was issued to address safety concerns raised when PG&E tendered for filing a document entitled “errata” on July 3, 2013, notifying the Commission that the MAOPs of two of its gas transmission lines, 101 and 147, must be corrected downward from 365 pounds per square inch gauge (psig) to 330 psig.⁸ This information raised an immediate safety concern that PG&E had been operating two lines located in the densely populated San Francisco Peninsula above a safe operating pressure. The longer-term safety concern was that PG&E’s pipeline records had, once again, been proven inaccurate, even after PG&E had reviewed the records for both of these lines in October, 2011, pursuant to a Commission order, to determine if it was safe to lift operating pressure restrictions imposed after the San Bruno explosion in 2010.

The OSC recognized two things: (1) PG&E had provided inaccurate information that the Commission relied upon to grant PG&E’s request to raise the MAOPs of Lines

⁵ The Safety Policy Statement can be found at http://www.cpuc.ca.gov/NR/rdonlyres/967047D4-19CE-45B1-8766-057F1D7FF1CD/0/VisionZero4Final621014_5_2.pdf

⁶ See footnote 2, above.

⁷ If the Commission prefers to use a different procedural vehicle to ensure that PG&E’s lines are operating at correct MAOPs, rather than an OSC proceeding, it is free to do so, but it should still vacate this flawed Decision.

⁸ Ex. OSC-1, Errata.

101 and 147 in D.11-12-048;⁹ and (2) the Pressure Restoration Orders allowing PG&E to raise the MAOPs of other San Francisco Peninsula high pressure gas transmission lines might be based on similarly inaccurate information.¹⁰

Based on the latter concern, the OSC ordered PG&E to show why “all orders issued by this Commission authorizing increased operating pressures should not [be] immediately suspended pending competent demonstration that PG&E’s natural gas system records are reliable.”¹¹ In other words, PG&E was ordered to show either that the records relied upon in the Pressure Restoration Orders were accurate, or that the Pressure Restoration Orders should not be stayed for some other reason. PG&E did not, however, make any showing to respond to these inquiries. The only exception – to the extent it can be called a “showing” – is the vague and unsubstantiated testimony PG&E’s attorney elicited during friendly cross examination on September 6, 2013, wherein PG&E’s witness claimed that PG&E “revalidated” the MAOPs for some of the OSC Lines in 2012 or 2013 after discovering the Line 147 errors.¹²

In sum, the questions raised by the OSC – whether the Pressure Restoration Orders are based on inaccurate information and whether the MAOPs approved in those orders are accurate – remain unanswered.

In the face of this evidentiary vacuum, and with no assurance regarding the safety of the MAOPs set in the Pressure Restoration Orders – the Decision performs a sleight of hand and closes the OSC inquiry by concluding that PG&E showed when it first requested the MAOP increases in 2011 and 2012 that it had pressure tested the OSC Lines and that “[n]o party has presented a factual basis for staying [those decisions].”¹³

⁹ OSC, pp. 2-3.

¹⁰ OSC, p. 6.

¹¹ OSC, p. 6.

¹² 16B RT 2467-2468 (PG&E/Singh).

¹³ Decision, p. 12 and Conclusions of Law (COL) 1 through 3. As discussed below in Section VI.A.2, while PG&E may have pressure tested all of the OSC Lines, those pressure tests are not in the record of the pressure restoration proceedings, nor are they in the record of this proceeding.

Thus, the Decision turns the OSC on its head by implicitly concluding that no new evidence was required to respond to the OSC – that the evidence in the 2011 and 2012 pressure restoration proceedings was sufficient – and that the intervenors bear the burden of showing that the Pressure Restoration Orders should be stayed.

The OSC was issued when the Commission learned that the data it had relied upon to support one of the Pressure Restoration Orders was wrong. This revelation triggered the need for a current and proactive showing from PG&E so that the Commission could determine whether the MAOPs authorized in the 2011 and 2012 Pressure Restoration Orders were correct. Yet the Decision concludes that a stay is unnecessary based on the very same prior PG&E showings from 2011 and 2012, two of which are now known to be inaccurate.¹⁴ And although PG&E may have reviewed its prior showings in response to the OSC, it did not offer them into the record.

The evidence PG&E did provide in response to the OSC shows that its records are not reliable. Among other things, the evidence demonstrates that PG&E’s claim of a 0.9% error rate is misleading because it significantly understates the number of actual errors in PG&E’s data and the safety implications of those errors. PG&E’s own evidence shows that there are 37 to 185 “type 5” errors in PG&E’s pipeline data – the type of errors that mandate a reduction in the MAOP of a line.¹⁵

III. STANDARD OF REVIEW

A Commission decision may be reversed if the reviewing court finds that the Commission has not proceeded in the manner required by law, the decision is not

¹⁴ The showings for Lines 101 and 147 resulting in adoption of MAOPs of 365 psig in D.11-12-048, were in error, as discussed in the Errata and the OSC.

¹⁵ See, e.g. TURN Opening Brief (OB), January 17, 2014, pp. 11-12 and ORA Reply Brief (RB), January 31, 2014, pp. 2-3. Consider also that the Commission’s Safety and Enforcement Division (SED) recently issued a report wherein it discovered one Type 5 error after examining only 20 pipeline features lists, equating to a 5% error rate for a material and consequential error requiring a reduction in the subject line’s MAOP. See “Safety Review Report of PG&E’s PSEP Update Application,” A.13-10-017, Safety and Enforcement Division, April 25, 2014, p. 11.

supported by the findings, or the findings are not supported by substantial evidence in light of the whole record.¹⁶

Rule 16.1 of the Commission's Rules of Practice and Procedure directs applicants for rehearing to "...set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous... The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."

IV. LEGAL AND FACTUAL ERRORS

A. The Decision Is Not Supported By Substantial Evidence And The Commission Has Not Proceeded In The Manner Required By Law

1. The Order To Show Cause Required PG&E To Show Whether The MAOPs Established In The 2011 Pressure Restoration Orders Are Based On Accurate Pipeline Features Data

The OSC was issued in response to PG&E's disclosure that its pipeline features records (also called "pipe design" records) for Line 147, which the Commission relied upon to authorize an increased MAOP from 330 to 365 psig in 2011, were inaccurate. Those PG&E "validated" records that the Commission relied upon to set the 365 psig MAOP in 2011 showed that Segment 109 of Line 147 was Double Submerged Arc Weld (DSAW) pipe, when in fact the Commission learned in July 2013 that the segment was made of weaker "AO Smith" pipe.¹⁷ According to PG&E, the corrected information required that the MAOP for Line 147 be reduced from 365 psig to 330 psig.

The Commission relied on similar data as provided in the original Line 147 proceeding to authorize increased pressures for the other four OSC Lines in the Pressure

¹⁶ Public Utilities Code § 1757; TURN v. Public Utilities Commission (2014) 223 Cal. App. 4th 945 (also known as "Oakley II").

¹⁷ See 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 Assigned Administrative Law Judge, August 30, 2013 (Verified Statement), ¶¶ 27-28.

Restoration Orders.¹⁸ Concerned that PG&E's prior showings regarding these other four lines may have been based on similarly inaccurate design information, the OSC directed PG&E to provide evidence to confirm that all of the MAOPs set in those 2011 and 2012 Pressure Restoration Orders were accurate. The OSC also noted PG&E's failure to provide accurate records in support of its October 2011 request to raise the MAOP for Line 147, even though PG&E was under intense scrutiny regarding its poor recordkeeping practices at that time, stating:

Despite [the] intense level of interest and review [regarding PG&E's historic recordkeeping errors], on October 31, 2011, PG&E filed a pipeline features analysis which it now acknowledges was based on erroneous pipeline records, and those errors included showing pipeline as being seamless or double-arc welded when the pipeline actually included components that used welds for which PG&E reduces the joint efficiency factor by 20%, and a reduction in the maximum allowable operating pressure, of the segment subject to the errata, of 35 psig.

More troubling is the means by which PG&E came to realize its error – a fortuitous leak repair. Thus, but for the happenstance of a leak and astute observations by repair technicians, this error would not have come to light.

Nearly three years [after the] San Bruno tragedy and the expenditure of hundreds of millions of dollars for record review and validation, the facts set forth in PG&E's July filing are profoundly troubling.

Order to Show Cause:

Due to the serious issues raised in the attempted July filing, PG&E is ordered to appear at the hearing scheduled below and show cause why all orders issued by this Commission authorizing increased operating pressures should not immediately [be] suspended pending competent demonstration that PG&E's natural gas system records are reliable.¹⁹

¹⁸ See footnote 2, above.

¹⁹ OSC, pp. 5-6 (footnotes omitted).

For Line 147, PG&E was specifically ordered to provide an updated “Safety Certification.”²⁰ PG&E did not do so for the other lines, nor did it present other evidence that the Pressure Restoration Orders were based on accurate pipeline records.

2. The Decision Fails To Address The Questions Posed By The Order To Show Cause

The Decision resolves the OSC by finding that the evidence of pressure tests previously attested to in the 2011 and 2012 proceedings makes a stay of the Pressure Restoration Orders unnecessary.²¹ It states:

This decision finds that Pacific Gas and Electric Company has pressure tested Lines 101, 132A, Lines 131-30, and the Topock Compressor Station in compliance with D.11-09-006 and that the Commission decisions lifting operating pressure restrictions on these Lines need not be suspended.²²

To be clear, this conclusion is based on findings made in the Pressure Restoration Orders in 2011 and 2012, without any review of the original supporting information.²³

The purpose of the OSC was to verify – anew – the pipeline design information submitted in 2011 and 2012, but that was not done. How then can the unexamined pressure test records from earlier proceedings be the basis for concluding that the Pressure Restoration Orders correctly determined the MAOPs? Quite simply, the Decision fails to address the inquiry ordered by the OSC.

The statement in the Decision relies on two findings to conclude a stay is not warranted. One is that PG&E previously pressure tested the OSC Lines. The other is that PG&E’s prior showing in the pressure restoration proceedings was in compliance

²⁰ Ruling Of Assigned Commissioner And Assigned Administrative Law Judge Directing Pacific Gas And Electric Company To File And Serve Updated Safety Certification For Line 147 And Setting Prehearing Conference, October 8, 2013.

²¹ Decision, p. 2.

²² Decision, p. 2.

²³ Decision, p. 18, COL 1: “PG&E complied with the Supporting Information requirements of D.11-09-006 in its presentations that led to D.11-10-010, D.12-09-003, and D.11-12-048.”

with the requirements spelled out in D.11-09-006²⁴ The Decision cannot rest on these findings for at least two reasons.

First, the Decision’s implicit determination that a hydrotest makes up for bad data is fundamentally wrong from both a legal and engineering perspective. This is a serious error that could compromise public safety.

As both the federal gas pipeline safety regulations²⁵ and the National Transportation Safety Board’s Report on the San Bruno explosion (NTSB Report) recognize,²⁶ an MAOP established solely by a hydrotest does not ensure that a line is safe. Design records remain a critical feature in ensuring a line’s safety and establishing a correct MAOP. Former Commissioner Ferron sought to publicly correct the PG&E-created misperception that a hydrotest trumps accurate records in a colloquy with PG&E’s Executive Vice President of Gas Operations, Nick Stavropoulos, that is in the record of this proceeding. Former Commissioner Ferron explained: “[t]his argument that we had hydrostatic tests, therefore, there's no safety issue, therefore, there's no need to report is completely illogical.”²⁷ Commissioner Ferron was right: Line 147 was pressure tested, but the pipeline features error discovered after that test required that the MAOP be reduced. The earlier pressure test may have been performed as prescribed by the regulations, but the later-discovered pipeline features error was dispositive. The colloquy between former Commissioner Ferron and Mr. Stavropoulos reinforces this fact:

MR. STAVROPOULOS: Yeah. So the hydrotest is the primary tool used to establish the MAOP for Line 147.

COMMISSIONER FERRON: Right. And that hydrotest was available to the Commission in December 2011. So we took that into consideration when we set the MAOP at 3 – at 360.

²⁴ Both of these facts are stated on page 1 of the Decision, and are evidently captured in COL 1.

²⁵ The federal gas pipeline safety regulations are codified at 49 CFR Part 192.

²⁶ See, e.g., NTSB Report, p. 82 (identifying the limitations of pressure tests). The federal gas pipeline safety regulations do not permit the MAOP of a line to be established solely on the results of a pressure test. See 49 CFR § 192.619(a), which requires a combination of factors, including the design features of a line, to be considered in establishing the MAOP of a line.

²⁷ 19 RT 3032:16-19.

When we – but that was not the sole determinant. The Pipeline Features List was an important part of that decision. And then when we determined that one of the factors that went into that determination was materially wrong, and you know, PG&E's own calculations said based on that information we should operate at 330. On what basis can you in good faith say that the fact that there's a hydrotest trumps the fact that the Pipeline Features List was incorrect?²⁸

Commissioner Ferron knew that a valid hydrotest is only one part of the equation, and the focus of the OSC was therefore on the second part of the equation – the lines' design feature records. Thus the Decision errs factually in determining that a hydrotest is all that is needed to determine that the Pressure Restoration Orders correctly set the MAOPs and therefore need not be stayed.²⁹

Second, to the extent that the Decision relies upon any evidence from the proceedings leading to the Pressure Restoration Orders, as far as the Joint Parties can determine, the records of those proceedings contain no verifiable evidence of the pressure tests that PG&E conducted, or of the pipeline features that PG&E relied upon to set the MAOPs for the OSC Lines.³⁰ This key evidence is missing from the record

²⁸ 19 RT 3033-3034: 23-12 (emphasis added).

²⁹ The City and County of San Francisco (CCSF) made nearly identical points in its Reply Brief in this proceeding. See CCSF RB, January 31, 2014, pp. 3-4.

³⁰ During the OSC proceedings, in addressing the proper MAOP for Line 147, ORA repeatedly moved for hydrotest records and line feature information to be included in the record of that and other pressure restoration proceeding, such as the ones at issue here. These concerns were repeatedly brushed aside based on the practice developed during the proceedings leading to the Pressure Restoration Orders. See Discussion regarding ORA's motion and the ALJ's Ruling at 18 RT 2751-2755, 2765-2767, 2775-2776: 26-18 (Gruen/SED making a similar motion to enter hydrotest data into the record and denial based on prior practice); and 2974:6-18 and 15-18 ("... [C]onsistent with our past practice in dealing with pressurization, that information is not included in the formal record."). These rulings denying admission of evidence into the record were made notwithstanding the fact that ORA and other parties used such records as cross examination exhibits in their examination of PG&E witnesses. See 17 RT 2683:26, 2685:13, and 2699:22. See also the discussion of these same issues in Section III.D of the City of San Carlos' and Office of Ratepayer Advocates' Joint Application For Rehearing of Decision No. 13-12-042 Establishing Maximum Operating Pressure for Pacific Gas And Electric Company's Nature Gas Transmission Line 147, filed January 23, 2014 in this proceeding.

notwithstanding the fact that D.11-09-006 required PG&E to “file” such information with the Commission in the pressure restoration proceedings.³¹

The only evidence of the pressure tests or the pipeline features is in PG&E testimony and short “certifications” referring to the more specific data required to be “filed” by D.11-09-006. The test records and pipeline features lists that should corroborate PG&E’s testimony and “certifications” were not made part of the record. Thus, there is no way for any party (or a reviewing court) to review the records of the prior proceedings and find verifiable corroborating evidence that the tests were properly conducted, that the tests covered the entire length of each of the lines in question, or that PG&E relied upon accurate design information in setting the MAOPs for the OSC Lines.

In sum, there is no verifiable corroborating evidence in the record of R.11-02-019 to support a finding that the MAOPs in the Pressure Restoration Orders were calculated correctly.³² Given this complete lack of evidence, no reasonable person can have confidence that the MAOPs for the OSC Lines are correct and that the Pressure Restoration Orders should not be stayed. Not only does the Decision lack substantial evidence, the Commission has not proceeded in the manner required by law by ignoring the express requirement in D.11-09-006 that such evidence should be filed and placed in the record of the pressure restoration proceedings.

3. PG&E Provided No Evidence Corroborating Its Testimony That It Reviewed Its Records For The OSC Lines And Confirmed That They Did Not Contain Errors Requiring MAOP Reductions

Although the OSC directed PG&E to revisit and, if necessary, supplement the evidentiary showings made in the earlier pressure restoration proceedings, with a focus

³¹ D.11-09-006, p. 11 (“We ... adopt the following requirements for the Supporting Information to be filed by PG&E with this first request to lift an operating pressure limitation and we expect that this information will be the minimum requirements for future such filings.” Such information included line segment descriptions, complete pressure test results, MAOP validation records, and other verifiable evidence support a proposed MAOP.

³² ORA Opening Brief, January 17, 2014, pp. 1-2 and 5-8.

on the design features of the OSC Lines,³³ PG&E provided no evidence corroborating or elaborating upon its testimony regarding any of the OSC Lines in this OSC proceeding.

To be clear:

1. PG&E did not offer any verifiable evidence addressing, much less supporting, the current MAOPs of the OSC Lines;
2. PG&E did not offer design data about the OSC Lines or any verifiable evidence that it reviewed the design data of the OSC Lines to confirm that the MAOPs were accurate; and
3. PG&E did not offer pressure test records that supported the existing MAOPs of the OSC Lines.

PG&E will argue that it did provide evidence, but none of PG&E's "evidence" was material, substantial, or verifiable. In its Opening Brief, PG&E asserted that it "performed a thorough review of the PFLs for [the OSC lines] to determine whether any similar errors were present. This review did not identify any records discrepancies on [those lines]."³⁴ PG&E then states: "The parties did not identify additional records discrepancies on the other Pressure Restoration Lines."³⁵ PG&E thus makes an unverifiable assertion in its Opening Brief, after the hearings concluded, and then shifts the burden of proof to the parties. The assertion in the brief that PG&E thoroughly reviewed its pipeline features records is not evidence.³⁶ Instead of rejecting these manoeuvres, the Decision embraced them,³⁷ thereby committing legal error.

³³ See the OSC generally, and specifically pp. 5 and 6 ("... PG&E filed a pipeline features analysis which it now acknowledges was based on erroneous pipeline records ..." and "No later than August 30, 2013, PG&E shall file and serve a verified statement of its Vice President of Gas Transmission Maintenance and Construction setting forth the exact events, with dates, which revealed PG&E errors, and PG&E's subsequent actions.")

³⁴ PG&E OB, p. 6.

³⁵ *Id.*

³⁶ See *TURN v. Public Utilities Commission* (2014) 223 Cal. App. 4th at 959 ("We may reverse the Commission's decision only if, based on the evidence before the Commission, no reasonable person could reach the conclusion it did. (*SFPP, L.P. v. Public Utilities Commission, supra*, 217 Cal.App.4th at p. 794.)" and reversing the Commission's determination of need for the Oakley plant as not supported by substantial evidence.)

³⁷ See Decision p. 17, FOF 4 and p. 18, COL 1 and 2.

As ORA observed in its Opening Brief, PG&E provided no documentation for the record to demonstrate that the data for the other pressure restoration lines is accurate.³⁸ The only “evidence” of PG&E’s “thorough review” of those records is its witness’s claim during the September 6, 2013 OSC hearing that the review was performed.³⁹ PG&E is correct that no party identified discrepancies in these records, but that is because no such records were produced. It was PG&E’s burden to produce these records and show they were accurate during the evidentiary phase of this proceeding, and it did not meet this burden.

While the Decision apparently takes PG&E’s word that PG&E performed this data re-review, this does not come close to the showing required by the OSC, nor does it meet the evidentiary requirements of § 1757. Perhaps more significantly, it does not meet any meaningful public safety standard. As NTSB Chairman Deborah Hersman said in a concurring statement on the NTSB Report: “For government to do its job – safeguard the public – it cannot trust alone. It must verify through effective oversight.”⁴⁰ PG&E claims, made in vague statements during hearings or after the fact, that it reviewed the MAOP validation records for all of the OSC lines, do not meet this basic standard.

Absent any evidentiary record to support the Decision,⁴¹ rehearing should be granted to require PG&E to make the showing ordered by the OSC.

B. The Decision Ignores Uncontroverted Evidence That PG&E’s Records Were Unreliable And Contained Material Errors Requiring MAOP Reductions

ORA, TURN, and San Bruno all presented uncontroverted evidence that PG&E’s pipeline records were unreliable and should be further examined by the Commission. Among other things, ORA demonstrated in its Opening Brief that:

³⁸ ORA OB, p. 2.

³⁹ 16B RT 2467-2468 (PG&E/Singh).

⁴⁰ NTSB Report, p. 135.

⁴¹ See note 36, above.

- PG&E has ongoing recordkeeping problems that were evidenced in PG&E’s October 11, 2013 Safety Certification for Line 147;⁴²
- PG&E is not complying with Federal Safety Regulations to establish MAOP, including regulations that require certain records before PG&E can operate under those regulations;⁴³
- PG&E is mischaracterizing its data assumptions as “conservative” when more conservative assumptions may be required by Federal regulations;⁴⁴ and
- PG&E’s new data management programs are not state of the art and will not facilitate employee discovery of data errors, or prevent future data errors from being made.⁴⁵

TURN demonstrated that PG&E misrepresented its data error rate in the OSC proceeding, and that PG&E’s own evidence showed that there were 37 to 185 lines with Type 5 errors – design errors that would require MAOP reductions. As TURN explained in its Opening Brief, the record shows that the “less than one percent error rate” (actually 0.9%) that PG&E repeatedly referred to in its Opening Brief and testimony only applies to Type 5 errors – the most significant errors in PG&E’s system and what PG&E refers to as “hits” that require a reduction in the MAOP of a line.⁴⁶ Further, the 0.9% error rate was only based on a statistical sample, so that PG&E’s witness was forced to acknowledge that there were many Type 5 errors not yet identified in PG&E’s system.⁴⁷ In fact, cross examination established that there is a 99% probability that there are 37 to

⁴² ORA, OB pp. 8-9 and Exhibits P and Q (ORA Testimony and Exhibits regarding inaccuracies in the PG&E data provided in support of the MAOP for Line 147, which are part of the record of this proceeding).

⁴³ ORA, OB pp. 15-16.

⁴⁴ ORA, OB pp. 16-18.

⁴⁵ ORA, OB pp. 9-10 and Exhibits OSC-8, OSC-9 (ORA Testimony and Exhibits regarding problems observed in PG&E’s data management systems, which are part of the record of this proceeding).

⁴⁶ TURN OB, pp. 11-13. See also 20 RT 3124-3128 (Singh/P&G&E), 3127:23-27 (“So when you talk about the 0.9 percent error rate, you're only talking about one of the five categories of errors, the Type 5 errors; right? A Yes.”).

⁴⁷ TURN OB, pp. 11-13. See also 20 RT 3124-3132 (Singh/P&G&E).

185 more Type 5 errors (and thus lines operating above a safe MAOP) in PG&E’s gas transmission system.^{48, 49}

San Bruno demonstrated that there was a 25% error rate for the Line 147 pipeline features list.⁵⁰ This suggests that that the error rate for the OSC Lines is likely to be similarly substantial.

The Decision acknowledges that PG&E’s data has errors. Finding of Fact 1 states:

PG&E does not possess traceable, verifiable, and complete records of each of [sic] pipeline segment and fitting in its natural gas transmission and distribution system.

However, the Decision gratuitously adds a one-sided finding that “PG&E is continuously reviewing and improving the reliability of its natural gas transmission recordkeeping programs” – a finding with questionable support in the record. The Decision also downplays the import of PG&E’s recordkeeping errors by explaining that after all the discovery in this proceeding:

The end result is that we have confirmed what we found three years ago – PG&E has decades-old natural gas transmission pipelines with less than perfect documentation of what is in the ground. Moreover, even with available records, there is no way to know what one does not know because of the absence of any particular records.⁵¹

As TURN aptly pointed out in its reply comments on the Proposed Decision, the MAOP validation program begun in 2011 was supposed to remedy the serious problems with PG&E’s records. The record of the OSC proceeding showed that PG&E’s records still contain many errors that can result in erroneously high MAOPs.⁵² It is troubling that the Decision appears to throw up its hands at this state of affairs, closing down the OSC

⁴⁸ Id.

⁴⁹ PG&E may argue that its 0.9% error rate supports a finding that a stay of the Pressure Restoration Orders is appropriate and/or that the MAOPs set in the Pressure Restoration Orders are accurate. However, both of these arguments are misplaced given the flaws in the 0.9% error rate described herein.

⁵⁰ San Bruno OB, p. 4 and 17 RT 2648: 9-23 (Singh/PG&E).

⁵¹ Decision, p. 14.

⁵² TURN PD Reply Comments, May 20, 2014, pp. 1-2.

inquiry with no meaningful review of the MAOP-validated records to confirm the accuracy of the MAOPs adopted in the Pressure Restoration Orders.

C. The Decision Improperly Shifts The Burden Of Proof To The Intervenors

As the Commission has held, an OSC by its very nature places the burden of proof on the respondent⁵³ and the OSC in this case was very clear on that point. As discussed earlier, PG&E did not make the showing required by the OSC, but the Decision shifts the burden of proof to the intervenors in the case. Finding of Fact 4 provides: “No party presented evidence that PG&E had not pressure tested Lines 131-30, Lines 101 and 132A, and the suction side of the Topock Compressor Station.”⁵⁴ Conclusion of Law 2 provides: “No party presented evidence to support a finding of good cause to stay D.11.10-010, D.12-09-003, and D.11-12-048.”⁵⁵ The text of the Decision provides more insight into the conclusion:

As required by D.11-09-006, PG&E has submitted valid and verified pressure test results in support of its requests to lift maximum operating pressure limitations for Lines 131-30, Lines 101 and 132A, and the Topock Compressor Station. No party has presented a factual basis for staying D.11-10-010, D.12-09-003, and D.11-12-048. We, therefore, decline to stay these decisions.⁵⁶

Evidently, the Decision closes the OSC proceeding with no further action because no one has shown that the OSC Lines were not subjected to a valid pressure test. This conclusion—a cornerstone of the Decision—is factually and legally flawed.

⁵³ See, e.g., Investigation 02-03-023, 2002 Cal. PUC LEXIS 208, *11 (“An order to show cause has been described as ‘in the nature of a citation to a party to appear at a stated time and place to show cause why the requested relief should not be granted.’ (*Difani v. Riverside County Oil Co.* (1927) 201 Cal.210, 213-214; 6 Witkin, Cal Proc. (4th ed. 1997) Proceedings Without Trial, § 55, at 454.) In an order to show cause proceeding, the burden is on the respondent to show good cause why the proposed legal action should not go forward.”); reiterated in D.02-09-004, 2002 Cal. PUC LEXIS 525, *11.

⁵⁴ Decision, p. 17, FOF 4.

⁵⁵ Decision, p. 18, COL 2.

⁵⁶ Decision, p. 12.

First, as discussed in Section IV.A.2 above, finding that a stay is not required because PG&E hydrotested the lines is illogical. The OSC questioned the quality of PG&E’s pipeline features records and the accuracy of the MAOPs adopted in the Pressure Restoration Orders. As explained in Section IV.A.2 above, a hydrotest is not a substitute for accurate pipeline features records and cannot be solely relied upon to establish the MAOP of a line. Accurate pipeline features records are essential for other purposes too, such as integrity management. The parties’ “failure” to show that the lines were not “subjected to a valid pressure test” is irrelevant to the issues raised by the OSC.

Second, the Decision departed from the scope of the OSC, which did not ask whether the lines in question had been hydrotested but whether they are operating at the correct MAOP, which is based on pipe design, among other factors.⁵⁷ The intervenors had no notice that they needed to adduce evidence on whether the pressure test results were valid. By changing the scope without notice to parties the Commission has “not proceeded in the manner required by law” and has violated the Joint Parties’ rights to a fair process.⁵⁸

Third, shifting the burden of an OSC showing to the intervenors suggests that if no one intervenes in an OSC, the responding party can simply pack up and go home without responding at all. This was clearly not the intent of the OSC and is inconsistent with prior Commission decisions holding that the respondent is required to respond to an OSC.⁵⁹ Thus, in shifting the burden the Commission has again “not proceeded in the manner required by law” and violated the Joint Parties’ rights.⁶⁰

Fourth, as discussed in Section IV.B above, the intervenors adduced material and uncontroverted evidence that PG&E’s pipeline features data is unreliable, thus supporting, at a minimum, a stay of the Pressure Restoration Orders pending

⁵⁷ See, e.g., 49 CFR § 192.619(a).

⁵⁸ Public Utilities Code § 1757(a)(2) and (6).

⁵⁹ See footnote 53, above.

⁶⁰ Id.

confirmation that the MAOPs established in those orders were proper. Consequently, the Decision's Finding of Fact 4 and Conclusion of Law 2 to the contrary are factually incorrect.

Rehearing should be granted, with clarification that PG&E has the burden of proof in this OSC, that the scope of the OSC is limited to what is clearly contemplated in the OSC, and that PG&E must meet its burden of proof before this OSC can be concluded.

D. The Decision Errs By Failing To Distinguish Between “Maximum Operating Pressure” and “Maximum Allowable Operating Pressure,” Resulting In A Lack of Clarity

The Decision refers to “maximum operating pressure” or “MOP” in a number of places where it is likely that the term “maximum allowable operating pressure” (MAOP) should be used.⁶¹ Adding to the confusion is the fact that the Decision fails to define either term or explain its legal significance so that it is unclear whether the Decision is using these terms interchangeably to refer to the same thing, or something else.

This error should be corrected because the terms mean different things; they are not interchangeable, and lack of clarity may make it difficult to hold PG&E accountable.

MAOP is defined as the “maximum pressure at which a pipeline or segment of a pipeline may be operated” in the federal gas pipeline safety regulations,⁶² and it must be calculated pursuant to 49 CFR § 192.619. The MAOP may not be exceeded unless otherwise specifically permitted under those regulations, which, among other things, specify the equipment required to ensure a line operates consistent with its MAOP.⁶³

⁶¹ See, for example, Decision pp. 4-5 (The Commission established an “MOP of 365 psig” for lines 101, 132A, and 147); p. 12 (PG&E requested to lift “maximum operating pressure limitations” for Lines 131-30, 101, 132A, and the Topock Compressor Station); p. 14 (“strength testing these pipelines to very high pressures reasonably supports their established maximum operation pressure...”); p. 16 (references to maximum operating pressure); p. 18, Ordering Paragraph 1 (“Should such law and regulations require a decreased maximum operating pressure”). See also the title of the Decision: “Decision Declining To Stay Decisions Authorizing Increased Operating Pressure.”

⁶² 49 CFR § 192.3.

⁶³ See, e.g., 49 CFR §§ 192.195 and 192.201.

PG&E may be in violation of those regulations if it does not operate the line consistent with its MAOP.

The NTSB has explained that MOP, which is not defined in the federal gas pipeline safety regulations,⁶⁴ is a term used by PG&E for the actual operating limit, determined by the operator, which may vary depending on conditions and operational needs, but which is sometimes lower than the MAOP determined pursuant to federal regulations.⁶⁵, ⁶⁶

The NTSB has made it clear that MAOP and MOP mean different things. The definition of MAOP is tied to the federal regulations. The NTSB Report explains on the first page in footnotes 6 and 7:

⁶ MAOP is defined by the Pipeline and Hazardous Materials Safety Administration (PHMSA) as the maximum pressure at which a pipeline or segment of a pipeline may be operated under Title 49 Code of Federal Regulations (CFR) Part 192. (Part 192 contains the minimum Federal safety standards for the transportation of natural gas by pipeline.)

⁷ MOP is an operating limit defined by PG&E. As explained by PG&E, sometimes a line's MOP equals the MAOP. But when a line is crosstied to (open to) a line with a lower MAOP, the higher rated line is limited by the MAOP of the lower rated line. In the case of Line 132, when it was open to Line 109 (which had a MAOP of 375 psig), as it was at the time of the accident, the MOP of Line 132 was 375 psig.⁶⁷

Given these important distinctions between the terms – which the NTSB believed were significant enough to reiterate on the first page of its report – it is error to use the

⁶⁴ “Maximum operating pressure” is defined at in Part 195 of the federal regulations (49 CFR § 195.2) which applies to the transportation of hazardous liquids, but it is not defined in the regulations governing transportation of natural gas.

⁶⁵ See NTSB Report, p. 1, footnotes 6 and 7.

⁶⁶ It is possible, though the Joint Parties are unaware of any evidence in support, that PG&E's “MOP” is shorthand for “maximum actual operating pressure,” which is defined in the federal regulations as: “the maximum pressure that occurs during normal operations over a period of 1 year.” 49 CFR § 192.3.

⁶⁷ See NTSB Report, p. 1, footnotes 6 and 7.

terms interchangeably. The Decision should be corrected to define the terms and use them appropriately throughout.⁶⁸

V. CONCLUSION: IN THE INTEREST OF PUBLIC SAFETY, THE COMMISSION SHOULD ORDER PG&E TO MAKE THE SHOWING REQUIRED BY THE OSC AND IT SHOULD REVIEW THAT SHOWING

The Decision does not address the inquiry opened by the OSC, is not supported by substantial evidence, impermissibly shifts the burden of proof to the intervenors, and does not proceed as required by law. It leaves unanswered the question of whether the OSC Lines are operating at the correct MAOPs. To protect public safety and correct these errors, the Commission should grant rehearing and order PG&E to submit new Safety Certifications for all of the OSC Lines. The Rehearing Order should put PG&E on notice that its Safety Certifications will not be taken at face value. The Commission should order a review of PG&E's Safety Certifications for each OSC Line to confirm that that PG&E has properly determined the MAOP consistent with 49 CFR Part 192. Further, to ensure the availability of the record relied upon by the Commission to make important safety determinations, and consistent with the requirements of D.11-09-006, PG&E's Safety Certifications, including all supporting information, should be made part of the record.

The Rehearing Order should also communicate clearly to PG&E that a pressure test is not a substitute for accurate records, that both state and federal laws and regulations require accurate records to operate and maintain a gas transmission system safely over time, and that the Commission expects PG&E to develop a reliable records management system. To meet these challenges successfully the Commission must clearly articulate these expectations and monitor PG&E's progress.

⁶⁸ See also D.13-12-042, the Decision Establishing Maximum Operating Pressure For Pacific Gas And Electric Company's Natural Gas Transmission Line 147, which contains similar errors. Applications for Rehearing pointing out these errors in D.13-12-042 are pending.

Respectfully submitted,

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