



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

I.12-01-007
(Filed January 12, 2012)
(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.

I.11-02-016
(Filed February 24, 2011)
(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with Higher Population Density

I.11-11-009
(Filed November 10, 2011)
(Not Consolidated)

**OPENING BRIEF OF THE CITY OF SAN BRUNO
CONCERNING THE FINES AND REMEDIES TO BE IMPOSED ON
PACIFIC GAS AND ELECTRIC COMPANY**

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**OPENING BRIEF OF THE CITY OF SAN BRUNO
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Pursuant to Rule 13.11 of the California Public Utilities Commission’s (the “Commission”) Rules of Practice and Procedure and the Administrative Law Judges’ Ruling Adopting Revised Schedule and Common Briefing Outlines dated February 4, 2013, as modified by Administrative Law Judge Wetzell’s Ruling dated April 12, 2013,¹ the City of San Bruno (the “City” or “San Bruno”) submits this Opening Brief concerning the fines and remedies to be imposed on Pacific Gas and Electric Company (“PG&E”) in

¹ Ruling Addressing Motion of the Consumer Protection and Safety Division for Clarification and setting date for Reply Briefs (April 12, 2013).

connection with the Commission's three (3) open investigations into the misconduct of PG&E prior to and during the rupture and explosion of PG&E's pipeline 132 on September 9, 2010 (the "Line 132 Explosion"): Investigation 12-01-007 (the "Root Cause OII"), Investigation 11-02-016 (the "Recordkeeping OII"), and Investigation 11-11-009 (the "HCA OII") (the "Line 132 Explosion Investigative Proceedings"). On September 25, 2012, Administrative Law Judges Amy C. Yip-Kikugawa and Mark S. Wetzell granted Consumer Protection and Safety Division's ("CPSD") request that the parties file a single coordinated brief regarding fines and remedies in Proceedings I.11-02-016, I.11-11-009, and I.12-01-007.

I. INTRODUCTION

Not since the days of the great reformer Hiram Johnston has the regulatory environment for public utilities faced such a watershed moment.² How this Commission sentences PG&E for proven misconduct that led to the incineration of a quintessential California suburban neighborhood and the death and injury of scores of innocent people will decide whether it is our elected and appointed representatives or the big utilities themselves who rule the house. Harkening back to that first era of great regulatory reform, it was the "Octopus" of Southern Pacific Railroad that had its limbs amputated.³ Today, it is the arrogance of the powerful and omnipresent investor-owned utilities, and in particular, PG&E that must be tamed, reformed and reconstituted.

Once a proud, innovative and pioneering enterprise overseen by talented engineers and visionary entrepreneurs who aggregated and built an impressive system of power sources, transmission facilities and energy distribution infrastructure, we now have

² 23rd Governor of California (1911-1917)

³ Norris, Frank, *The Octopus: A Story of California* (Doubleday, Page, 1901).

an insular and haughty corporate giant earning a profit of more than a billion dollars per year⁴ and acting as if it is just another business enterprise with an army of lawyers and a slick veneer of public relations.⁵ PG&E's existence is now defined by seeking to reward its shareholders, bondholders and executives with robust returns and compensation.⁶ Listen to any "earnings call"⁷ and "PG&E" could be substituted for any large multi-billion dollar capitalist enterprise selling widgets.

And this is at the heart of the problem, a problem Intervenor respectfully believe this Commission fails to appreciate. PG&E is *NOT* the same as Microsoft,⁸ Caterpillar⁹ or Ford.¹⁰ Rather it is a public utility which delivers a valuable, but explosive product, an efficient but hazardous energy source, a vital but deadly and invisible gas. Moreover, it is one of the most despised forms of business organizations in American culture.¹¹ It is a monopoly. Californians have no choice in selecting a natural gas supplier. While California citizens suffer the necessary evil of natural monopolies, they have every right to demand that they operate safely, in the public interest and as a servant to the greater

⁴ PG&E Corporation and Pacific Gas and Electric Company 2012 Annual Report at 1.

⁵ Jaxon Van Derbeken, *PG&E's ads: Utility 'lost its way'*, San Francisco Chronicle (July 17, 2012) available at: <http://www.sfgate.com/bayarea/article/PG-E-s-ads-Utility-lost-its-way-3714243.php>.

⁶ See Decision 86-10-043 at 2, 1986 Annual Report at 36, Opening Brief of City of San Bruno in I.12-01-007 at 34-37 (March 11, 2013).

⁷ See, e.g., Q1 2013 PG&E Corporation Earnings Conference Call (Thursday, May 2, 2013 11:00 a.m. ET) available at: <http://investor.pgecorp.com/phoenix.zhtml?c=110138&p=irol-eventDetails&EventId=4941305>

⁸ Microsoft Corporation (MSFT)

⁹ Caterpillar Inc. (CAT)

¹⁰ Ford Motor Co. (F)

¹¹ See, e.g., *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447 (1993) ("The purpose of the [Sherman Antitrust] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself.")

societal good. The covenant Californians have with a monopoly is that it provides safe, reliable and efficient service in exchange for a guaranteed rate of return.¹²

On September 9, 2010, and for many years preceding that infamous date, PG&E “lost its way”¹³ and failed utterly to uphold its end of the bargain. PG&E breached its covenant with the public and with our representative form of government. For that, PG&E must be required to fundamentally change the way it operates. For that, PG&E should be punished – and harshly – for only harsh punishment will deter bad behavior in the future.

II. SUMMARY OF FINES AND REMEDIES TO BE IMPOSED ON PG&E

San Bruno requests that the fines and remedies imposed on PG&E in these proceedings be commensurate and proportional to the gross neglect¹⁴ and mismanagement¹⁵ of its natural gas infrastructure and operations for a half a century. San Bruno urges the Commission to reassert its constitutional and plenary regulatory authority¹⁶ over PG&E in order to remedy the utility’s disregard for federal and state law

¹² See Decision 12-12-030; California Public Utilities Commission Division of Strategic Planning, *California’s Electric Services Industry: Perspectives on the Past, Strategies for the Future* at 9 (February 3, 1993) (“Under [the “traditional regulatory compact”] an investor-owned public utility in California was granted 1) an exclusive retail franchise to serve a specific geographic region; 2) an opportunity to recover prudently incurred expenses; 3) an opportunity to earn a reasonable return on investment; and 4) powers of eminent domain. In return for these privileges, the utility was subject to cost and price regulation by the Commission, **and required to provide safe and reliable service to all customers in its service area** on a nondiscriminatory basis. This latter feature of the compact is commonly called the utility’s “duty,” or “obligation” to serve.”) (emphasis added)

¹³Evidentiary Hearings in I.12-01-007 (Yura/PG&E) at p. 973, Lines 13-28 through p. 974, Lines 1-15; Jaxon Van Derbeken, PG&E’s ads: Utility “Lost Its Way,” San Francisco Chronicle, (7/17/12), <http://www.sfgate.com/bayarea/article/PG-E-s-ads-Utility-lost-its-way-3714243.php>

¹⁴ Opening Brief of the City of San Bruno in I.12-01-007 at 29-34 (March 11, 2013).

¹⁵ NTSB report at 127. (“The National Transportation Safety Board determines that the probable cause of the accident was (PG&E’s) (1) inadequate quality assurance and quality control in 1956 during its Line 132 relocation project, which allowed the installation of a substandard and poorly welded pipe section with a visible seam weld flaw that, over time grew to a critical size, causing the pipeline to rupture during a pressure increase stemming from poorly planned electrical work at the Milpitas Terminal; and (2) inadequate pipeline integrity management program, which failed to detect and repair or remove the defective pipe section.”).

¹⁶ See, e.g., Cal. Pub. Util. Code Section 701.

and Commission orders, rules and decisions.¹⁷ San Bruno requests that this Commission exercise its extraordinary equitable powers to fundamentally transform PG&E.

Consistent with this request, San Bruno respectfully asks the financial penalties be borne exclusively by PG&E shareholders. The un rebutted evidence in these proceedings demonstrates that the financial costs of these penalties are well within the capabilities of the utility to sustain - without fatal consequences to its ability to raise capital and borrow money.¹⁸

A. PG&E Should Not be Permitted to Marginalize San Bruno or Intervenor by Characterizing Penalties as “Extreme”

During a recent investor call to report first quarter 2013 financial results, PG&E officers stated that the position of Intervenor on the amount of the fines to be levied against PG&E for the Root Cause OII (I.12-01-007) and the associated Recordkeeping OII (I.11-02-016) and HCA OII (I.11-11-009) would be “extreme.”¹⁹ Not only does San Bruno take great umbrage at such a suggestion, it is not remotely correct. Rather, what happened on that balmy September evening in 2010 was “extreme,” not the fines, penalties and equitable remedies San Bruno requests from the Commission herein. “Extreme” is the grief for those killed. “Extreme” is the pain of permanent injuries. “Extreme” is the loss of homes and cherished, irreplaceable possessions. And, “extreme” is the loss of that basic sense of safety and security we should all be able to enjoy in our own homes.

¹⁷ See section III.B, *infra*.

¹⁸ See, Evidentiary Hearing Transcript (PG&E/Fornell) at 1587- 1588 ((March 5, 2013); Evidentiary Hearing Transcript (PG&E/Fornell) at 1637, lines 21-28 through 1638, lines 1-19

¹⁹ Q1 2013 PG&E Corporation Earnings Conference Call (Thursday, May 2, 2013 11:00 a.m. ET) available at: <http://investor.pgecorp.com/phoenix.zhtml?c=110138&p=irol-eventDetails&EventId=4941305>

Further, however, it is the number of PG&E safety code violations,²⁰ and the possible fines involved that are Brobdingnagian. Section 2108 of the California Public Utilities Code provides that:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

Under Section 2107 of the California Public Utilities Code:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

Taken together, therefore, the three Line 132 Explosion Investigatory Proceedings involve allegations of tens of millions of daily violations spanning, in many instances, over half a century.²¹ As a result of the Commission's obligation to consider each day of a continuing violation a separate and distinct offense, the outside range of fines for these violations exceeds several hundred billion dollars.²² For example, in the HCA OII (I.11-11-009), CPSD alleges over 2,000 different violations, which when calculated on a daily basis constitute over 30 million violations.²³ The maximum possible fine in that investigation alone, even if only half of the violations are proven, is massive. In the Recordkeeping OII (I.11-02-016), PG&E has identified over 23,000 pipeline segments in populated areas for which it does not possess records for testing or maintenance of its

²⁰ See section III.B, *infra*.

²¹ See section III.B, *infra*. See also, Cal. Pub. Util. Code section 2108 (establishing that for continuing violation each day's continuance is a separate and distinct offense); Cal. Pub. Util. Code section 2107 (setting fine range between \$5,000 - \$50,000 per violation).

²² *Id.*

²³ CPSD Report, HCA OII (I.11-11-009), at 58, Table 12.

pipeline as required by state and federal law.²⁴ If violations from 1956 to 2010 are proven for only 1,000 of those segments, the maximum possible fine in that investigation is enormous. And this is only one set of violations of the 35 that CPSD alleges in the Recordkeeping OII (I.11-02-016).

By making the observation that Intervenors are “extreme,” San Bruno has proof that PG&E believes it is above the law and controls this Commission and the outcome of these Line 132 Explosion Investigative Proceedings. The Legislature has wisely placed inherent limitations on the amount of possible fines.²⁵ In essence, the Commission cannot break the company.²⁶ As we know from PG&E’s own financial expert witness, a fine of \$2 billion would be “difficult” for PG&E but the company would “survive.”²⁷

B. Summary of Fines

In accordance with Section 2104.5 of the California Public Utilities Code and Commission Decision 98-12-075, San Bruno requests that the Commission impose a \$1.25 billion fine on PG&E, to be paid forthwith into the State Treasury to the credit of the General Fund.

San Bruno requests that the \$1.25 billion fine the Commission imposes on PG&E be borne exclusively by utility shareholders. San Bruno’s request is based on the scale over time of the violations of the law that the utility committed prior to and during the Line 132 Explosion, as documented in the Root Cause OII (I.12-01-007), the Recordkeeping OII (I.11-02-016) and the HCA OII (I.11-11-009) by CPSD²⁸ and further supported by the findings and conclusions set forth in the National Transportation Safety

²⁴ Opening Brief of CPSD in Recordkeeping OII (I.11-02-016) at 17 (March 25, 2013).

²⁵ See, Cal. Pub. Util. Code section 2104.5; D.98-12-075

²⁶ *Id.*

²⁷ Evidentiary Hearing Transcript (PG&E/Fornell) at 1587- 1588 ((March 5, 2013)

²⁸ See section III.B, *infra*.

Board (“NTSB”) and Independent Review Panel (“IRP”) Reports as supplementary evidence. San Bruno also requests that the Commission insure the disallowance of costs associated with PG&E’s Pipeline Safety Enhancement Plan (“PSEP”),²⁹ as advocated by the Division of Ratepayer Advocates (“DRA”)³⁰ and The Utility Reform Network (“TURN”)³¹ in their opening briefs in the Root Cause OII (I.12-01-007).

The amount of the fine reflects multiple considerations. The Line 132 Explosion is symptomatic of a longstanding, cynical corporate culture³² by what is, or at least once was, the largest combination gas and electric utility in the United States. Whenever PG&E fails to respect its safety responsibilities, it places at risk virtually the entire population of northern California, or about 14 million people. In this respect, the terrible loss of life and injury in San Bruno is the tip of an iceberg. Moreover, PG&E’s safety responsibility is a broad corporate responsibility that cannot be treated as if the Line 132 Explosion were some isolated, anomalous improbable event. The Line 132 Explosion fine must serve as a continuing “teachable moment,” for PG&E and every other natural gas operator in California. An appropriate fine will be one that no Chief Executive of PG&E, no member of the PG&E Board of Directors, and no PG&E stockholder will ever forget. The \$1.25 billion fine that San Bruno proposes approximates only one year of PG&E’s earnings from operations. It also makes clear that cutting corners to produce earnings over a decades-long period is not a risk-free activity. Some will ask why the fine is paid to the general fund of the state and not reinvested in the system or refunded to ratepayers. The simple answer is that payment to the general fund is commanded by

²⁹ Rulemaking 11-02-019 (“R.11-02-019”)

³⁰ Opening Brief of DRA in Root Cause OII (I.12-01-007) at 9-11.

³¹ Opening Brief of TURN in Root Cause OII (I.12-01-007) at 6-8.

³² CPSD 451 violation

California statute.³³ The law is crystal clear and not subject to alternative interpretation.³⁴

But more importantly perhaps, fines are meant to punish and penalize, not reward the utility by increasing the rate base or reward ratepayers with a windfall. Anyone who violates the law and pays a fine pays it to the courts and ultimately to the state. Why should this be any different? Furthermore, such a payment serves as notice to utility executives and boards of directors in this state that ignorance of safety and of the public interest will not be tolerated.

C. Summary of Remedies

In addition, San Bruno specifically requests that the Commission impose the following remedies on PG&E, all of which have a specific nexus to the Line 132 Explosion: (1) establish an independent advocacy trust, the California Pipeline Safety Trust (the “Safety Trust”) and direct PG&E to provide an endowment of \$5 million per year, sufficient to support the advocacy work of the Safety Trust for 20 years; and (2) appoint and fund an Independent Monitor to oversee PG&E’s implementation of its Pipeline Safety Enhancement Program (“PSEP”) and remedies imposed in these proceedings to ensure the utility’s safety improvement efforts and the Commission’s do not lapse in a manner that once again threatens public safety; (3) establish a Peninsula Emergency Response Consortium to serve as a model for coordinated first responder emergency response and direct PG&E to provide \$150 million in funding over three years to support the work of the Peninsula Emergency Response Consortium; (4) require

³³ Cal. Pub. Util. Code section 2104.5 (“All fines and penalties recovered by the state in any such action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund”).

³⁴ *Id.* See also, *Assembly of the State of California v. Public Utilities Commission*, (1995), 12 Cal. 4th 87 (invalidating Commission order reallocating funds specifically recovered for ratepayer reimbursement to support infrastructure development and consumer education on the grounds that such reallocation was in direct violation of the strict language of section 453.5 of the California Public Utilities Code).

PG&E to formalize its emergency response role and disclosure obligations with each city, county and fire district in its service territory either through a memorandum of understanding (“MOU”) or by reforming PG&E’s franchise agreements to make them conform to the public interest in protecting property used by the franchisee and responding to threats or catastrophes quickly and efficiently; (5) direct PG&E to undertake an automated safety valve (“ASV”) pilot program throughout its service territory; (6) direct PG&E to modify its Long-Term Incentive Plan (“LTIP”) and Short-Term Incentive Plan (“STIP”) structure to eliminate the bias in favor of corporate profits at the expense of safety performance.

III. BACKGROUND

A. The Commission’s Line 132 Explosion Investigatory Proceedings

1. Scope of Root Cause Order Instituting Investigation (I.12-01-007)

The Commission instituted the Root Cause Order Instituting Investigation (“OII”) to determine whether PG&E, and its officers, directors, and managers, violated any provisions of the California Public Utilities Code, federal laws, Commission General Orders or decisions, or other applicable standards, laws, rules or regulations in connection with the San Bruno fire and explosion on September 9, 2010.³⁵ The Root Cause OII is not solely limited to the events that took place on September 9, 2010, but includes all past operations, practices and other events or courses of conduct that could have led to or contributed to the San Bruno explosion and fire.³⁶ The Commission

³⁵ Root Cause OII at 1.

³⁶*Id.*

declared its intent to specifically consider monetary fines and other remedies in the Root Cause OII to ensure that a catastrophe of this type does not occur again.³⁷

2. Scope of Recordkeeping OII (I.11-02-016)

The Recordkeeping OII is specifically focused on PG&E's recordkeeping practices.³⁸ The Commission instituted the Recordkeeping OII to determine whether PG&E violated any provision or provisions of the California Public Utilities Code, federal laws, Commission general orders or decisions, or other applicable rules or requirements pertaining to safety recordkeeping for its gas service and facilities.³⁹ The scope of the Recordkeeping OII is focused not only on Line 132, which ruptured on September 9, 2010, but also on whether PG&E's recordkeeping practices for its entire gas transmission system have been unsafe and in violation of the law.⁴⁰

3. Scope of HCA OII (I.11-11-009)

The HCA OII concerns whether PG&E's natural gas transmission pipeline system was safely operated in areas of greater population density or other areas identified as High Consequence Areas ("HCAs") pursuant to 49 Code of Federal Regulations ("C.F.R."), §§ 192.5 *et seq.*⁴¹ In particular, the HCA OII will determine whether determine whether PG&E violated any provisions of the California Public Utilities Code, federal laws, Commission rules, general orders, or decisions, federal regulations, or other applicable rules or requirements pertaining to the operation of its natural gas transmission pipeline system in or near locations of higher population density.⁴²

³⁷*Id.*

³⁸ Recordkeeping OII at 1.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ HCA OII at 1.

⁴² *Id.*

B. SUMMARY OF PG&E VIOLATIONS

PG&E compartmentalizes its actions, omissions and decisions along with the events of September 9, 2010 in a manner that camouflages the true scope of PG&E culpability. In this proceeding, PG&E goes to great lengths to dissociate the symphony of errors that contributed to the Line 132 Explosion as if each instrument is played from different sheets of music. The Line 132 Explosion was not the result of a single act of negligence by a now infamous and unknown crew of PG&E workers that constructed Segment 180 of Line 132. Rather, like other engineering disasters, it was a combination of factors that inevitably led to a tragic result.

According to PG&E, the whole of the utility's misconduct, the pattern of carelessness in and of itself, is never greater than the sum of those individual errors.⁴³ This narrow, segmented approach to failure analysis distorts any conclusion reached. Standing alone, PG&E's failure to accurately describe Segment 180 of Line 132 in its records presents a certain safety risk. However, when that inaccurate record is combined with an integrity management program skewed against tests that would uncover weld defects the risk increases exponentially, not linearly. The same steep increase in risk that defects will be ignored and a disaster will occur presents itself when PG&E's installation of defective pipe is combined with inaccurate records and then both of those errors are layered with a corporate culture that its focused on safety as a secondary, rather than primary concern. Why is this important? California Public Utilities Code section 2104.5 govern the Commission's assessment of penalties in this matter, and requires the Commission to consider specific factors when assessing fines and penalties. Among the

⁴³ See, e.g. Opening Brief of PG&E in Root Cause OII (I.12-01-007), section V.F.3 at 144-146 (compartmentalizing, minimizing "safety culture" allegations in order to obscure pervasive, dysfunctional safety culture)

factors set forth in Section 2104.5 is a “totality of the circumstances” test to be used when determining fines and penalties against the utility.

The NTSB Report similarly finds that a combination of errors contributed to the Line 132 Explosion, which also conflicts with PG&E’s piecemeal approach to analyzing the utility’s culpability. The NTSB determined that the Line 132 Explosion was an “organizational accident.”⁴⁴ According to the NTSB, its “...investigations often uncover a broad range of causal relationships or deficiencies that extend beyond the immediacy of components damaged or broken in a system failure,” and

Organizational accidents have *multiple contributing causes*, involve people at numerous levels within a company, and are characterized by a pervasive lack of proactive measures to ensure adoption and compliance with a safety culture. Moreover, organizational accidents are catastrophic events with substantial loss of life, property, and environment; they also require complex organizational changes in order to avoid them in the future.⁴⁵

When the NTSB investigates the causes of a disaster, it does not artificially segment the conduct, personnel, or corporate culture that contribute to the incident, for example:

In its report on the 2009 collision of two Washington Metropolitan Area Transit Authority trains near Fort Totten Station in Washington, DC, the NTSB stated that “the accident did not result from the actions of an individual but from the ‘accumulation of latent conditions within the maintenance, managerial and organizational spheres’ making it an example of a ‘quintessential organizational accident.’” The Chicago Transit Authority train derailment in 2006, which caused injuries to 152 people and over \$1 million in damages, is another case study in organizational accidents. Similarly, the BP Texas City Refinery organizational accident in 2005 killed 15 people, injured 180 others, and caused financial losses exceeding \$1.5 billion.⁴⁶

Neither federal nor state law, nor Commission decisions or general orders, nor due process protections require the Commission to analyze PG&E’s conduct in the

⁴⁴ NTSB Report at 117.

⁴⁵ NTSB Report at 117.

⁴⁶ NTSB Report at 117.

artificially segmented and compartmentalized manner that the utility advocates. The Commission has ample authority to instead evaluate PG&E's conduct and the extent to which it amounts to a violation through the same lens utilized by the NTSB, which considered the whole of PG&E's inappropriate conduct to be greater than the sum of its parts. In the NTSB's view, "the San Bruno pipeline rupture was an organizational accident," because "...a multitude of deficient operational procedures and management controls led to hazardous circumstances persisting and growing over time until the pipeline rupture occurred."⁴⁷

Nobel Peace Prize Winning Physicist, Richard P. Feynman's description of NASA's flaws in the Appendix to the Rogers Commission Report released in the wake of the Space Shuttle *Challenger* accident serves as a somber parallel to the deficiencies that PG&E allowed to persist over the course of many decades:

We have also found that certification criteria used in Flight Readiness Reviews often *develop a gradually decreasing strictness. The argument that the same risk was flown before without failure is often accepted as an argument for the safety of accepting it again.* Because of this, *obvious weaknesses are accepted again and again*, sometimes without a sufficiently serious attempt to remedy them, or to delay a flight because of their continued presence.⁴⁸

PG&E's segmented, compartmentalized analysis of its conduct not only facilitates the utility's strategy for minimizing penalties and fines in this proceeding, the Commission should also be aware that such an approach also makes it easier for the utility to allow such compartmentalized deficiencies to reoccur in the future. Where defects can be reduced to small segments that seem like isolated incidents, those same "obvious weaknesses" are easier to accept again and again going forward.

⁴⁷ NTSB Report at 117.

⁴⁸ Report of the Presidential Commission on the Space Shuttle Challenger Accident, Appendix F, Personal Observations on Reliability of Shuttle (June 6, 1986).

CSPD, in reliance on its own investigative reports and the work of the NTSB and the IRP, has conclusively established numerous PG&E violations of federal and state law and industry standards in the Line 132 Investigatory Proceedings. A summary of the violations in each Line 132 Investigatory Proceeding is set forth below:⁴⁹

Summary of PG&E Violations in Root Cause OII (I.12-01-007)⁵⁰

Violation (<i>Duration</i>)	Applicable Code, Standard
PG&E Violations related to fabrication and construction: Segment 180, Line 132.	
1 PG&E failed to construct segment 180 of Line 132 safely (<i>19,723 days⁵¹ 54 years</i>) ⁵²	Cal. Pub. Util. Code § 451
2 PG&E installed pipe that did not meet industry standards (<i>19,723 days 54 years</i>) ⁵³	Cal. Pub. Util. Code § 451
3 PG&E installed sections of pipe that were not safe for operational conditions. (<i>19,723 days 54 years</i>) ⁵⁴	Cal. Pub. Util. Code § 451 ASME B31.1.8-1955 (§810.1)
4 PG&E failed to conduct a hydrostatic test. ⁵⁵ (<i>19,723 days 54 years</i>)	Cal. Pub. Util. Code § 451 ASME B31.1.8-1955 (§811.412(c))
5 PG&E failed to visually inspect pipe segments by failing to visually inspect segments ⁵⁶ (<i>19,723 days 54 years</i>)	Cal. Pub. Util. Code § 451 ASME B31.1.8-1955 (§811.27(A))
6 PG&E installed “pups” on its pipeline that were less than five feet long. ⁵⁷ (<i>19,723 days 54 years</i>)	Cal. Pub. Util. Code § 451 API 5LX (§VI)
7 PG&E installed pipe segments that did not meet the appropriate minimum yield strength ⁵⁸	Cal. Pub. Util. Code § 451

⁴⁹ Summaries developed based on Opening Briefs of CPSD in the Root Cause OII (I.12-01-007), Recordkeeping OII (I.11-02-016) and the HCA OII (I.11-11-009) and are only intended to provide general treatment of the vast array of violations against PG&E alleged, and are not intended in any way to limit the scope, duration or substance of violations as alleged by CPSD.

⁵⁰ 55 listed violations equal thousands of violations (each violation is not broken out by day); see CPSD Opening Brief Appendix C

⁵¹ All “duration” days and years noted assume a September 9, 1956 start date and September 10, 2010 end date unless otherwise noted.

⁵² CPSD-1, p. 3, p. 162, pp. 15-23

⁵³ CPSD-1, p. 3, p. 162, pp. 15-23.

⁵⁴ CPSD-1, p. 3, p. 162, pp. 15-23.

⁵⁵ CPSD-1, p. 19; over 20 other references to the failure to hydro-test in CPSD-1. CPSD-9, pp. 33-

34.

⁵⁶ CPSD-1, p. 4, p. 162, p. 19. CPSD-9, p. 96.

⁵⁷ CPSD-1, p. 22, p. 162. CPSD-9, p. 94.

Violation (<i>Duration</i>)		Applicable Code, Standard
	(19,723 days 54 years)	ASME B31.1.8-1955 (§805.54)
8	PG&E improperly assigned a yield strength above 24,000 psi to a segment of unknown yield strength. (19,723 days 54 years) ⁵⁹	Cal. Pub. Util. Code § 451 ASME B31.1.8-1955 (§811.27(G))
9	PG&E used deficient welds on its pipeline. ⁶⁰ (19,723 days 54 years)	Cal. Pub. Util. Code § 451 ASME B31.1.8-1955 (§811.27(E))
10	PG&E used deficient welds on its pipeline. ⁶¹ (19,723 days 54 years)	Cal. Pub. Util. Code § 451 Section 1.7 of API Standard 1104 (4th Ed 1956)
11	PG&E used incomplete welds and failed to measure wall thickness on its pipeline. ⁶² (19,723 days 54 years)	Cal. Pub. Util. Code § 451 ASME B31.1.8-1955 (§811.27(C))
12	PG&E did not incorporate the “pups” into its calculation of the design pressure and MAOP for its pipeline. ⁶³ (19,723 days 54 years)	Cal. Pub. Util. Code § 451
13	PG&E failed to meet MAOP determination requirements because of its incomplete knowledge. ⁶⁴ (19,723 days 54 years)	Cal. Pub. Util. Code § 451 ASME B31.1.8-1955 (§845.22)
14	PG&E failed to assign a yield strength of 24,000 psi to its pipeline when the strength was unknown. (14,632 days 40 years, 22 days) ⁶⁵	49 CFR 192.107(b)(2)
PG&E Violations related to its Integrity Management Program.		
15	PG&E did not gather and integrate required pipeline data. (2461 days 6 years, 8 months, 26 days) ⁶⁶	49 CFR 192.917(b)
16	PG&E did not check for and verify the accuracy of its pipeline data. (14,632 days 40 years, 22 days) ⁶⁷	49 CFR 192 (incorporating ASME B31.1.8S (§5.7))
17	PG&E did not analyze its pipeline for the manufacture defect of a weld defect. (2461 days 6 years, 8 months, 26 days) ⁶⁸	49 CFR 192.917(a) (incorporating ASME B31.8S (§2.2))

⁵⁸ CPSD-1, p. 7, p. 13, pp. 19-20, p. 22, pp. 64-65, p. 162. CPSD-9, pp. 46-50.

⁵⁹ CPSD-1, p. 31, p. 15, p. 19. CPSD-9, p. 61, p. 108.

⁶⁰ CPSD-1, p. 13, p. 19, pp. 20-21, p. 162. CPSD-9, pp. 41-43, pp. 95-96.

⁶¹ CPSD-1, p. 13, p. 19, pp. 20-21, p. 162. CPSD-9, pp. 41-43, pp. 95-96.

⁶² CPSD-1, p. 21, p. 7, p. 19, p. 56, p. 61, p. 63, CPSD-9, pp. 27-28, pp. 41-43, pp. 92-96.

⁶³ CPSD-1, pp. 22-24, p. 3, p. 162. CPSD-9, p. 106.

⁶⁴ CPSD-1, pp. 22-24, p. 3, p. 162. CPSD-9, p. 106.

⁶⁵ Violation start date: 8/19/70; CPSD-1, p. 31. CPSD-9, p. 61, p. 106, p. 108.

⁶⁶ Violation start date: 12/15/2003; CPSD-1, pp. 26-30, p. 163. CPSD-9, p. 60, p. 69, p. 70, p. 85.

⁶⁷ Violation start date: 08/19/1970; CPSD-1, p. 26, pp. 28-29, p. 55. CPSD-9, p. 107, p. 110, p.

114.

⁶⁸ Violation start date: 12/15/2003; CPSD-1, pp. 33-36. CPSD-9, p. 36-39.

	Violation (<i>Duration</i>)	Applicable Code, Standard
18	PG&E failed to consider DSAW pipe as potentially subject to manufacturing defects. (2461 days 6 years, 8 months, 26 days) ⁶⁹	49 CFR 192.917(e)(3)
19	PG&E did not consider risks associated with operating above MOP of the last five years. (2465 days 6 years, 8 months, 30 days) ⁷⁰	49 CFR 192.917(e), and 192.917(e)(3)(i)
20	PG&E did not consider pipeline risk unstable and prioritize assessment of risks after operating above MOP of the last five years. (2465 days 6 years, 8 months, 30 days) ⁷¹	49 CFR 192.917(e)(3)(i)
21	PG&E did not consider or test for cyclic fatigue on its pipeline. (2461 days 6 years, 8 months, 26 days) ⁷²	49 CFR 192.917(e)(2)
22	PG&E did not use an inspection method capable of identifying seam issues. (2461 days 6 years, 8 months, 26 days) ⁷³	49 CFR 192.921(a)
23	PG&E failed to properly inspect or test its pipeline after exceeding MOP on ERW pipe (2465 days 6 years, 8 months, 30 days) ⁷⁴	49 CFR 192.917(e)(4)
24	PG&E did not identify where and how unsubstantiated pipeline data was used in threat identification (2461 days 6 years, 8 months, 26 days) ⁷⁵	49 CFR 192 (incorporating ASME B31.8S (§4.4))
25	PG&E did not (1) consider identified threats in risk assessment; (2) consider past events on Line 132; and (3) account for missing/questionable data (2461 days 6 years, 8 months, 26 days) ⁷⁶	49 CFR 192.917(c) (incorporating ASME B31.8S (§5.7))
26	PG&E's risk algorithms did not: (1) properly weigh threats know via operating experience; (2) identify the proper potential impact radius; (3) identify the proper Consequences of Failure formula; (4) use conservative values for electrical interference; (5) consider one-call tickets; and (6) consider historic problems with pipe type (2461 days 6 years, 8 months, 26 days) ⁷⁷	49 CFR 192.917(c) (incorporating ASME B31.8S (§5))

⁶⁹ Violation start date: 12/15/2003; CPSD-1, pp. 32-34, p. 41, pp. 46-47, p. 163. CPSD- 9, p. 36.

⁷⁰ Violation start date: 12/11/2003; CPSD-1, pp. 42-44. CPSD-9, pp. 36-38.

⁷¹ Violation start date: 12/11/2003; CPSD-1, pp. 42-44. CPSD-9, pp. 36-38.

⁷² Violation start date: 12/15/2003; CPSD-1, p. 38, pp. 50-54, p. 26, p. 28, p. 36, p. 163. CPSD-9,

p. 38.

⁷³ Violation start date: 12/15/2003; CPSD-1, pp. 26-27, p. 47, p. 48, pp. 59-61, p. 134, p. 163.

⁷⁴ Violation start date: 12/11/2003; CPSD-9, p. 36.

⁷⁵ Violation start date: 12/15/2003; CPSD-1, pp. 27-29, p. 31, pp. 56-57. CPSD-9, pp. 60-61.

⁷⁶ Violation start date: 12/15/2003; CPSD-1, pp. 26-27, pp. 32-25, pp. 54-61. CPSD- 9, p. 39, p.

162.

	Violation (<i>Duration</i>)	Applicable Code, Standard
27	PG&E did not use conservative pipeline data where data was missing (2461 days 6 years, 8 months, 26 days) ⁷⁸	Cal. Pub. Util. Code § 451 ASME B31.8S, Appendix A (§4.2)
28	PG&E did not operate its system safely when it engaged in the practice of pressure spiking every 5 years to avoid testing or inspecting (2461 days 6 years, 8 months, 26 days) ⁷⁹	Cal. Pub. Util. Code § 451
PG&E Violations related to its SCADA system and the Milpitas Terminal.		
29	PG&E did not follow internal work procedures (1 day) ⁸⁰	49 CFR 192.13(c)
30	PG&E did not follow internal work procedures to the extent it created an unsafe condition (1 day) ⁸¹	Cal. Pub. Util. Code § 451
31	PG&E did not establish procedures for abnormal conditions (1 day) ⁸²	49 CFR 192.605(c)
32	PG&E did not to properly maintain the Milpitas Station (221 days 7 months, 9 days) ⁸³	Cal. Pub. Util. Code § 451
33	PG&E designed a SCADA system with too many unnecessary alarms (1,826 days 5 years) ⁸⁴	Cal. Pub. Util. Code § 451
PG&E Violations related to Emergency Response		
34	PG&E failed to create and follow adequate emergency plans. (375 days 1 year, 10 days) ⁸⁵	Cal. Pub. Util. Code § 451
35	PG&E did not respond promptly or effectively to the Line 132 Explosion due to inconsistent emergency plans (375 days 1 year, 10 days) ⁸⁶	49 CFR 192.615(a)(3)
36	PG&E did not enter into a mutual assistance agreement with local first responders (375 days 1 year, 10 days) ⁸⁷	49 CFR 192.615(a)(8)

⁷⁷ Violation start date: 12/15/2003; CPSD-1, p. 37, pp. 55-59.

⁷⁸ Violation start date: 12/15/2003; CPSD-1, p. 26, p. 28, pp. 30-32, p. 46, pp. 55-56, p. 58, p. 162. CPSD-9, pp. 4

⁷⁹ Violation start date: 12/15/2003; CPSD-1, p. 40, pp. 42-44. CPSD-9, pp. 36-38.

⁸⁰ Violation date: 9/9/2010; CPSD-1, p. 4, p. 70, pp. 84-85, p. 163. CPSD-9, pp. 90-91.

⁸¹ Violation date: 9/9/2010; CPSD-1, p. 4, p. 70, pp. 84-85, p. 163. CPSD-9, pp. 90-91.

⁸² Violation date: 9/9/2010; CPSD-1, p. 4, p. 70, 84-85, p. 163. CPSD-9, pp. 90-91.

⁸³ Violation assumed to have started 2/1/2010; CPSD-1, pp. 81-82, pp91- 92, pp. 94-95, pp. 98-99

⁸⁴ Violation assumed to have started 9/10/2005; CPSD-1, p. 4, pp. 70-72, pp. 73-74, p. 92, p. 96, p. 98, p. 99.

⁸⁵ Violation start date: 8/31/2009; CPSD-1, pp. 113-116, pp. 116-125.

⁸⁶ Violation start date: 8/31/2009; CPSD-10, p. 76; CPSD-1, pp. 55-56, p. 114 (FN 221), p. 117.

⁸⁷ Violation start date: 8/31/2009; CPSD-1, p. 114 (FN 221), pp. 117-118; CPSD-9, pp. 55-56; CPSD-10, p.76. CPSD propounded DR Legal Division 001-Q08 to obtain PG&E's Emergency Response Plan (ERP), which is hearing exhibit CPSD-297. Mutual Assistance Agreements are discussed on F-2.1 of PG&E's ERP

	Violation (<i>Duration</i>)	Applicable Code, Standard
37	PG&E did not have a plan for engaging mutual assistance (<i>375 days 1 year, 10 days</i>) ⁸⁸	49 CFR 192.615(c)(4)
38	PG&E's slow and uncoordinated response to the Line 132 Explosion was neither prompt nor effective. (<i>1 day</i>) ⁸⁹	49 CFR 192.615(a)(3)
39	PG&E failed to adequately receive, identify and classify emergency notices. (<i>1 day</i>) ⁹⁰	49 CFR 192.615(a)(1)
40	PG&E did not provide for proper personnel and resources at the emergency scene (<i>1 day</i>) ⁹¹	49 CFR 192.615(a)(4)
41	PG&E did not perform an emergency shutdown to adequately minimize hazards to life and property (<i>1 day</i>) ⁹²	49 CFR 192.615(a)(6)
42	PG&E did not make safe any actual or potential hazards to life and property (<i>1 day</i>) ⁹³	49 CFR 192.615(a)(7)
43	PG&E did not notify local first responders (<i>1 day</i>) ⁹⁴	49 CFR 192.615(a)(8)
44	PG&E did not have an emergency manual that required appropriate actions (<i>375 days 1 year, 10 days</i>) ⁹⁵	49 CFR 192.605(c)(1) and (3)
45	PG&E did not establish and maintain communications with local first responders (<i>1 day</i>) ⁹⁶	49 CFR 192.615(a)(2)
46	PG&E did not protect people first then property (<i>1 day</i>) ⁹⁷	49 CFR 192.615(a)(5)
47	PG&E did not establish and maintain a liaison with local first responders (<i>375 days 1 year, 10 days</i>) ⁹⁸	49 CFR 192.615(c)(4)
48	PG&E did not train personnel to recognize incidents properly (<i>1 day</i>) ⁹⁹	49 CFR 192.615(a)(3)

⁸⁸ Violation start date: 8/31/2009; CPSD-1, p. 114 (FN 221), pp. 117-118; CPSD-9, pp. 55-56; CPSD-10, p.76. CPSD propounded DR Legal Division 001-Q08 to obtain PG&E's Emergency Response Plan (ERP), which is hearing exhibit CPSD-297. Mutual Assistance Agreements are discussed on F-2.1 of PG&E's ERP.

⁸⁹ Violation date: 9/9/2010; CPSD-1, pp. 102-103, p. 114 (FN 221), pp. 117- 118; CPSD-9, pp. 55-56, pp. 97-100

⁹⁰ Violation date: 9/9/2010; CPSD-1, pp. 115-116, 118; CPSD-9, pp. 55-56, pp. 98-102; CPSD-10, p. 75, p. 77

⁹¹ Violation date: 9/9/2010; CPSD-1, pp. 120-122; CPSD-9, pp. 55-56, p. 99.

⁹² Violation date: 9/9/2010; CPSD-1, pp. 103, 117- 118, 120-122; CPSD-9, pp. 99, 101-102.

⁹³ Violation date: 9/9/2010; CPSD-1, pp. 117-118, 120-122; CPSD-9, pp. 55- 56, p. 99, pp. 101-102.

⁹⁴ Violation date: 9/9/2010; CPSD-1, p. 114, p. 118; CPSD-9, pp. 55-56, pp. 100-101.

⁹⁵ Violation start date: 8/31/2009; CPSD-1, pp. 117-118; CPSD-1, pp. 119-122; CPSD-9, pp. 55-56, pp. 99-100.

⁹⁶ Violation date: 9/9/2010; CPSD-1, pp. 118-119; CPSD-9, p. 100.

⁹⁷ Violation date: 9/9/2010; CPSD-1, pp. 118-119; CPSD-9, p. 100.

⁹⁸ Violation start date: 8/31/2009; CPSD-1, pp. 118-119; CPSD-9, p. 100.

⁹⁹ Violation date: 9/9/2010; CPSD-1, pp. 102-103, p. 114, p. 123; CPSD-10, p. 14. CPSD-9, p. 21, pp. 98- 99.

	Violation (<i>Duration</i>)	Applicable Code, Standard
49	PG&E did not train personnel properly or ensure they are knowledgeable about procedures. (<i>1 day</i>) ¹⁰⁰	49 CFR 192.615(b)(2)
50	PG&E never determined if its training is effective (<i>1 day</i>) ¹⁰¹	49 CFR 192.615(b)(3)
51	PG&E failed to review its emergency response periodically. (<i>1 day</i>) ¹⁰²	49 CFR 192.605(c)(4)
52	PG&E did not properly educate the public and local officials. (<i>1 day</i>) ¹⁰³	49 CFR 192.616(d)
53	PG&E did not perform alcohol tests in a timely manner and failed to record the reasons for lack of compliance. (<i>1 day</i>) ¹⁰⁴	49 CFR 199.225(a)
54	PG&E did not perform drug and alcohol tests on Gas Control staff. (<i>1 day</i>) ¹⁰⁵	49 CFR 199.225(a) and 49 CFR 199.105(b)
PG&E Violation related to its Safety Culture		
55	PG&E failed to place safety over profits by: (1) reducing safety-related budgets; (2) spending less than authorized on safety; (3) prematurely ending its transmission pipeline replacement plan; (4) not seeking sufficient O&M funds; (5) using less effective and cheaper IM tools; (6) reducing safety-related personnel, while at the same time using retained earnings to pay dividends, repurchasing stock, providing bonuses, expending funds on public relations and ballot initiatives. (<i>4,635 days 12 years, 8 months, 9 days</i>) ¹⁰⁶	Cal. Pub. Util. Code § 451

Summary of PG&E Violations in Recordkeeping OII (I.11-02-016)¹⁰⁷

	Violation (<i>Duration</i>)	Applicable Code, Standard
1	<u>Salvaged Pipe Records</u> . PG&E failed to create and maintain accurate, complete, and accessible records	Cal. Pub. Util. Code § 451; California Public Utilities

¹⁰⁰ Violation date: 9/9/2010; CPSD-1, pp. 102-103, p. 114, p. 123; CPSD-10, pp. 14-15. CPSD-9, p. 21, pp. 98-99.

¹⁰¹ Violation date: 9/9/2010; CPSD-1, pp. 102-103, p. 114, p. 123; CPSD-9, p. 21, pp. 98-99.

¹⁰² Violation date: 9/9/2010; CPSD-1, pp. 102-103, p. 114, p. 123; CPSD-9, p. 21, pp. 98-99.

¹⁰³ Violation date: 9/9/2010; CPSD-1, pp. 123-125; CPSD-9, pp. 57-59, p. 77, p. 115.

¹⁰⁴ Violation date: 9/9/2010; CPSD-1, pp. 99-101. CPSD-9, pp. 21-22, pp. 104-105.

¹⁰⁵ Violation date: 9/9/2010; CPSD-1, pp. 99-101. CPSD-9, pp. 21-22, pp. 104-105.

¹⁰⁶ Violation start date: 1/1/1998; CPSD-1, p. 3. CPSD-1, Chapter IX, pp. 126-161. CPSD-168, passim.

¹⁰⁷ 35 listed violations equal thousands of violations (one violation includes approximately 23,700 missing strength test pressure records, and another violation includes approximately 2,500 assumed SMYS values of higher than 24,000 PSI); see CPSD reply brief, passim

Violation (<i>Duration</i>)	Applicable Code, Standard
of pipe salvaged from its transmission system and reused in Line 132. (<i>continuing violation</i>) ¹⁰⁸	Act, Article II, section 13(b)
2 <u>Construction Records for 1956 Project GM 136471.</u> PG&E failed to keep complete and accurate construction records for the project GM 136471, the project that installed Segment 180 in 1956, replacing a part of Line 132 that had been installed in 1948. (<i>1949 to September 9, 2010</i>) ¹⁰⁹	Cal. Pub. Util. Code § 451.
3 <u>Pressure Test Records.</u> PG&E did not retain pressure test records for Segment 180 of Line 132 for the life of the facility. (<i>1956 to 2010</i>) ¹¹⁰	Cal. Pub. Util. Code § 451; California Public Utilities Act, Article II, section 13(b)
4 <u>Underlying Records Related to Maximum Allowable Operating Pressure for Segment 180.</u> PG&E's Pipeline Survey Sheets, GIS and Official MAOP list for pipelines, called Drawing 086868,118, required a 390 psi MAOP for the part of Line 132 that included Segment 180. (<i>1978 to 2004</i>) ¹¹¹	Cal. Pub. Util. Code § 451
5 <u>Clearance Procedures.</u> PG&E personnel did not have a written sequence of steps to be undertaken in the maintenance procedure. (<i>September 1, 2010 - September 9, 2010</i>) ¹¹²	Cal. Pub. Util. Code § 451; California Public Utilities Act, Article II, section 13(b)
6 <u>Operations and Maintenance Instructions.</u> The Operating and Maintenance Instructions manual at the Milpitas Terminal was out of date. (<i>December 1998 - September 2010</i>). ¹¹³	Cal. Pub. Util. Code § 451; 49 CFR 192.615
7 <u>Drawing and SCADA Diagrams of the Milpitas Terminal.</u> PG&E personnel at the Milpitas Terminal only had access to an outdated map and control room personnel had access to an incomplete diagram of the Milpitas Terminal. (<i>2008 – 2010</i>). ¹¹⁴	Cal. Pub. Util. Code § 451
8 <u>Back-up Software at Milpitas Terminal.</u> PG&E conducted electrical work at the Milpitas Terminal without appropriate back-up software available for	Cal. Pub. Util. Code § 451

¹⁰⁸ Opening Brief of CPSD in Recordkeeping OII at 24 (March 25, 2013).

¹⁰⁹ Opening Brief of CPSD in Recordkeeping OII at 33 (March 25, 2013).

¹¹⁰ Opening Brief of CPSD in Recordkeeping OII at 38 (March 25, 2013).

¹¹¹ Opening Brief of CPSD in Recordkeeping OII at 43 (March 25, 2013).

¹¹² Opening Brief of CPSD in Recordkeeping OII at 50 (March 25, 2013).

¹¹³ Opening Brief of CPSD in Recordkeeping OII at 53 (March 25, 2013).

¹¹⁴ Opening Brief of CPSD in Recordkeeping OII at 56 (March 25, 2013).

Violation (<i>Duration</i>)	Applicable Code, Standard
valve controllers on Line 132 segment 180 (2008 to 2010.) ¹¹⁵	
9 <u>Supervisory Control and Data Acquisition System</u> (“SCADA”). PG&E’s SCADA did not provide to PG&E personnel the information needed in the control room and elsewhere to deal effectively with the Line 132 Explosion and did not provide PG&E personnel with sufficient information to determine the best course of remedial action to take. (2008 to 2010.) ¹¹⁶	Cal. Pub. Util. Code § 451
10 <u>Emergency Response Plans</u> . PG&E’s Emergency Plan failed to support a safe and efficient response to the Line 132 Explosion, which contributed to a longer than necessary response. (April 2010 to September 2010). ¹¹⁷	Cal. Pub. Util. Code § 451; 49 CFR section 192.615
11 <u>Incidents of Operating Line 132 in excess of 390 MAOP</u> . PG&E operated Line 132 in excess of 390 psi MAOP on at least three occasions without following regulations that required hydrostatically testing. (three violations in 2003, 2008, 2010) ¹¹⁸	Cal. Pub. Util. Code § 451; GO 112
12 <u>Preservation of Records Related to Brentwood Camera Six Video</u> . PG&E destroyed relevant evidence after the Commission directed that all evidence relevant to the San Bruno incident be preserved. (September 9, 2010 – present date) ¹¹⁹	Commission Resolution Number L-403; D.09-08-029
13 <u>PG&E’s Data Responses Regarding Brentwood Camera Six Video</u> . PG&E provided CPSD and the Commission with data responses that were contradictory and misleading, and that impeded the investigation of important and relevant issues in this proceeding. (two responses: 2011 – present date and 2012 – present date) ¹²⁰	Commission Rules of Practice and Procedure Rule 1.1.
14 <u>PG&E Data Responses Regarding Personnel at Milpitas Terminal on September 9, 2010</u> : PG&E failed to identify all personnel for whom CPSD sought identification and made two false or misleading statements. (two violations: October 10,	Commission Resolution Number L-403; D.09-08-029

¹¹⁵ Opening Brief of CPSD in Recordkeeping OII at 61 (March 25, 2013).

¹¹⁶ Opening Brief of CPSD in Recordkeeping OII at 63 (March 25, 2013).

¹¹⁷ Opening Brief of CPSD in Recordkeeping OII at 66 (March 25, 2013).

¹¹⁸ Opening Brief of CPSD in Recordkeeping OII at 70 (March 25, 2013).

¹¹⁹ Opening Brief of CPSD in Recordkeeping OII at 73 (March 25, 2013).

¹²⁰ Opening Brief of CPSD in Recordkeeping OII at 80 (March 25, 2013).

Violation (<i>Duration</i>)	Applicable Code, Standard
2011 – date of Commission decision; December 17, 2011 – date of Commission decision, or alternatively in each case through January 15, 2012). ¹²¹	
15 [withdrawn]	
16 <u>Job Files</u> . PG&E job files are missing or contain accounting information without essential engineering information. (<i>continuing violation from 1987</i>). ¹²²	Cal. Pub. Util. Code § 451; ASME B31.8; PG&E’s internal policies.
17 <u>Pipeline History Records</u> . PG&E failed to retain its pipeline history records. (<i>continuing violation from 1987 to 2010</i>). ¹²³	Cal. Pub. Util. Code § 451; ASME B31.8; PG&E’s internal policies; GO 112-B through GO 112-E
18 <u>Design and Pressure Test Records Missing</u> . PG&E failed either to do the required strength tests, or to retain the strength test records and required data of tests that it conducted. (<i>1956 through 2010</i>). ¹²⁴	ASME B31.1.8; GO 112; 49 CFR 192.503, 49 CFR 192.505, and 49 CFR 192.507.
19 <u>Weld Maps and Weld Inspection Records</u> . PG&E failed to retain weld maps and weld inspection records. (<i>continuous from 1930 to 2010</i>). ¹²⁵	Cal. Pub. Util. Code § 451; ASME B31.8; California Public Utilities Act Article II section 13(b); 49 CFR 192.241 and 192.243; General Orders 112, 112A, and 112B section 107; and PG&E standard practice.
20 <u>Operating Pressure Records</u> . PG&E did not create or maintain the operating records (1930-2010). ¹²⁶	Cal. Pub. Util. Code § 451; California Public Utilities Act Article II section 13(b), ASME B31.8, General Orders 112, 112A, and 112B section 107, and PG&E internal policies.
21 <u>Pre-1970 Leak Records</u> . PG&E’s records of transmission pipe leaks before 1970 is inadequate. (1930 to 2010). ¹²⁷	Cal. Pub. Util. Code § 451, California Public Utilities Act Article II section 13,

¹²¹ Opening Brief of CPSD in Recordkeeping OII at 84 (March 25, 2013).
¹²² Opening Brief of CPSD in Recordkeeping OII at 87 (March 25, 2013).
¹²³ Opening Brief of CPSD in Recordkeeping OII at 92 (March 25, 2013).
¹²⁴ Opening Brief of CPSD in Recordkeeping OII at 101 (March 25, 2013).
¹²⁵ Opening Brief of CPSD in Recordkeeping OII at 109 (March 25, 2013).
¹²⁶ Opening Brief of CPSD in Recordkeeping OII at 114 (March 25, 2013).
¹²⁷ Opening Brief of CPSD in Recordkeeping OII at 118 (March 25, 2013).

Violation (<i>Duration</i>)	Applicable Code, Standard
	ASME B31.8, General Orders 112, 112A, and 112B section 107.
22 <u>Leak Records from 1970 Forward.</u> PG&E has an incomplete and inaccessible set of post 1970 leak records. (1970-2010). ¹²⁸	Cal. Pub. Util. Code § 451; ASME B31.8, PG&E internal policies
23 <u>Records to Track Salvaged and Reused Pipe.</u> PG&E could not identify the location, characteristics and specifications for reused pipe installed before 1970, (1954-2010). ¹²⁹	Cal. Pub. Util. Code § 451; PG&E’s internal policies.
24 <u>Data in Pipeline Survey Sheets and the Geographic Information System (“GIS”).</u> Important pipeline data in PG&E’s GIS is erroneous and incomplete, and diminishes safety, including data related to pipe specifications, pipe manufacturer, reused of pipe, weld characteristic or seamlessness, pipe location, MAOP, populations near the pipe, and others (1974 to 2010). ¹³⁰	Cal. Pub. Util. Code § 451, and PG&E’s internal policies
25 <u>Data Used in Integrity Management Risk Model.</u> PG&E data and records are incomplete, inaccurate, and inadequate, making PG&E’s integrity management model, and the critical prioritization of pipeline risk that is the product of the model incomplete, inaccurate, and inadequate. (2004-2010) ¹³¹	Cal. Pub. Util. Code § 451
26 <u>Missing Report for 1988 Weld Failure.</u> PG&E lost the report documenting repair of a leak on Line 132 resulting from a manufacturing defect in the longitudinal weld of the pipe. (1988 to 2010). ¹³²	Cal. Pub. Util. Code § 451; PG&E Standard Practice General Order 112.
27 <u>Missing Report for 1963 Weld Failure.</u> PG&E failed to retain a 1963 weld failure report (1963 to 2010) ¹³³	Cal. Pub. Util. Code § 451; PG&E Standard Practice General Order 112.
28 <u>General Records Management Violations.</u> PG&E was missing strength test records; missing weld records; had incomplete, missing and duplicate job files; missing Operating Pressure Records; missing,	49 CFR, section 192.709; Cal. Pub. Util. Code § 451; California Public Utilities Commission General Orders 112, 112A, and 112B,

¹²⁸ Opening Brief of CPSD in Recordkeeping OII at 121 (March 25, 2013).

¹²⁹ Opening Brief of CPSD in Recordkeeping OII at 124 (March 25, 2013).

¹³⁰ Opening Brief of CPSD in Recordkeeping OII at 130 (March 25, 2013).

¹³¹ Opening Brief of CPSD in Recordkeeping OII at 134 (March 25, 2013).

¹³² Opening Brief of CPSD in Recordkeeping OII at 157 (March 25, 2013).

¹³³ Opening Brief of CPSD in Recordkeeping OII at 161 (March 25, 2013).

Violation (<i>Duration</i>)	Applicable Code, Standard
<p>inaccurate, erroneous, and incomplete GIS data; frequently failed to use conservative assumed GIS values; had incomplete leak records; missing pipeline history files; missing and incomplete Records that Show Reused Pipe; missing and Incomplete Metallurgical Reports; and substandard Records Management (1955-2010)¹³⁴</p>	<p>section 107; and ASME Code B31.8. 49 CFR section 192.619(c)</p>
<p>29 <u>Records Retention Violations.</u> PG&E failed to retain Leak Survey Maps (April 16, 2010 to September 9, 2010.); Line Patrol Reports (September 1, 1964 until September 9, 2010); Line Inspection Reports (April 6 1994 until September 2010); Pressure Test Records (April 6 1994 until September 2010); Transmission Line Inspections (September 1, 1964 until September 2010); Failure To Comply With Specific Record Retention. PG&E also failed to follow own record retention requirements (1955-2010)¹³⁵</p>	<p>(Leak Survey Maps) 49 CFR section 192.709, and Cal. Pub. Util. Code § 451</p> <p>(Line Patrol Reports) ASME B31.8; 49 CFR 192.709; section 107 of General Orders 112, 112A, 112B; and Cal. Pub. Util. Code § 451</p> <p>(Line Inspection Reports) ASME B31.8; 49 CFR section 192.709; and Cal. Pub. Util. Code § 451</p> <p>(Pressure Test Records) ASME B31.8; 49 CFR section 192.709; and Cal. Pub. Util. Code § 451</p> <p>(Transmission Line Inspections) ASME B31.8; 49 CFR, section 192.709; Commission General Orders 112, 112A, and 112B section 107; and Cal. Pub. Util. Code § 451</p> <p>(Failure to comply with specific record retention requirements) 49 CFR 192.13(c), Cal. Pub. Util. Code § 451, General Orders</p>

¹³⁴ Opening Brief of CPSD in Recordkeeping OII at 163 (March 25, 2013).

¹³⁵ Opening Brief of CPSD in Recordkeeping OII at 193 (March 25, 2013).

Violation (<i>Duration</i>)	Applicable Code, Standard
	112, 112A, and 112B section 107, ASME B31.8, and PG&E internal requirements.
30 <u>Other Alleged Safety/Pipeline Integrity Violations:</u> PG&E used the wrong year as an upper limit in its Gas Pipeline Replacement Program; its inferior records had an impact on predicting earthquake damage; and PG&E had inadequate leak records. (1995-September 9, 2010) ¹³⁶	Cal. Pub. Util. Code § 451

Summary of PG&E Violations in HCA OII (I.11-11-009)¹³⁷

Violation (<i>Duration</i>)	Applicable Code, Standard
1 PG&E changed class locations without a class study	49 CFR §192.609
2 PG&E did not confirm or revise MAOP following a class change.	49 CFR §192.611
3 PG&E did not provide continuing surveillance on segments operating at greater than 20% SMYS, resulting in unobserved class changes	49 CFR § 192.613
4 PG&E operated segments at pressures greater than allowed for their current class location	49 CFR § 192.619
5 PG&E did not patrol its pipelines.	49 CFR § 192.705
6 PG&E did not retain pipeline patrol records for the requisite five years.	49 CFR § 192.709
7 PG&E did not follow its own procedures.	49 CFR §192.13(c)
8 PG&E operated segments above MAOP.	49 CFR§ 192.107, Cal. Pub. Util. Code § 451

IV. FINES

A. San Bruno Demands that a \$1.25 Billion Fine be Imposed on PG&E

San Bruno, an Intervenor in this matter, request that the Commission impose a fine of \$1.25 billion dollars in the three consolidated proceedings. According to the testimony in these proceedings, this amount is roughly PG&E’s corporate profits for only

¹³⁶ Opening Brief of CPSD in Recordkeeping OII at 208 (March 25, 2013).

¹³⁷ 3,062 total violations; see CPSD Opening Brief, table 12 at p. 58.

one year.¹³⁸ According to the record, this fine is sustainable by the utility.¹³⁹ A \$1.25 billion fine is sufficiently punitive to serve as an effective inducement for PG&E and every other investor-owned utility in California and the United States to elevate safety over profits and executive compensation. The citizens of San Bruno and the citizens of California have every right to expect this Commission to do no less.

B. The Applicable Legal Standard Supports Imposition of \$1.25 Billion Fine

California Public Utilities Code section 2104.5 and Commission Decision 98-12-075 govern the Commission's assessment of penalties in this matter. Section 2104.5 provides in relevant part:

Any penalty for violation of any provision of this act, or of any rule, regulation, general order, or order of the commission, involving safety standards for pipeline facilities or the transportation of gas in the State of California may be compromised by the commission...

...In determining the amount of such penalty, or the amount agreed upon in compromise, *the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.* (emphasis added)

This statutory mandate is consistent with the principles the Commission relies upon to establish fines, as described in Decision 98-12-075:

- (1) The financial resources of the utility,
- (2) The severity of the offense,
- (3) The conduct of the utility to prevent, detect, disclose and rectify the violation, and
- (4) The totality of the circumstances.¹⁴⁰

¹³⁸ PG&E Corporation and Pacific Gas and Electric Company 2012 Annual Report at 1.

¹³⁹ See, e.g. Evidentiary Hearing Transcript (PG&E/Fornell) at 1587- 1588 ((March 5, 2013)

¹⁴⁰ See 84 CPUC2d at 182-184, 193-195.

According to the Commission, “the purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator and others...”¹⁴¹

In order to be effective, deterrence,

.....creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result.¹⁴²

Examination of the facts in the Line 132 Explosion Investigations relative to the factors set forth in Section 2104.5 of the California Public Utilities Code and the Commission-established principles for fine calculation strongly counsel in favor of the Commission imposing a significant fine on PG&E.

1. A \$1.25 Billion Penalty is Appropriate Relative to the Size of PG&E’s Business

PG&E is, in all respects, a behemoth. The utility provides natural gas and electric service to approximately 15 million people throughout a 70,000-square-mile service area in northern and central California.¹⁴³ The year of the Line 132 Explosion, PG&E made over \$47 million in political contributions¹⁴⁴ and spent \$46 million on its Proposition 16 campaign to maintain its privileged monopoly.¹⁴⁵ In that same year, PG&E paid officers of Pacific Gas and Electric Company more than \$37 million in aggregate compensation.¹⁴⁶ Proxy-listed officers of PG&E Corporation and non-officers of Pacific Gas & Electric Company with base salaries higher than a quarter of a million dollars

¹⁴¹ 84 CPUC 2d 155 at 182, 18.8

¹⁴² *Id.*

¹⁴³ *See*, PG&E Company Profile, available at: www.pge.com/en/about/company/profile/index.page

¹⁴⁴ Report of Pacific Gas and Electric Company Pursuant to General Order No. 77-M For the Year Ended December 31, 2010 at 132-138, available at: https://www.pge.com/regulation/GO_77M/GO_77M-2010-Redacted.pdf

¹⁴⁵ CPSD Report in I.12-01-007 at 147-148.

¹⁴⁶ Report of Pacific Gas and Electric Company Pursuant to General Order No. 77-M For the Year Ended December 31, 2010 at 145, available at: https://www.pge.com/regulation/GO_77M/GO_77M-2010-Redacted.pdf

were paid over \$18 million.¹⁴⁷ In short, PG&E spent over \$149 million on political contributions, campaigns and executive compensation in 2010.

In 2010, PG&E reported operating revenues were \$13.841 billion.¹⁴⁸ According to PG&E, PG&E Corporation's net income after dividends on preferred stock for the first quarter of 2013 was \$239 million.¹⁴⁹ A mere two and a half years after the Line 132 Explosion, PG&E profits are on the rise. PG&E's profits for the first quarter of 2013 represent an increase in first-quarter profits relative to the utility's performance in the first quarter of 2012, in which it earned \$233 million.¹⁵⁰ According to PG&E reports, utility revenue for electric and gas operations combined reached \$3.67 billion for the first quarter of 2013 alone.¹⁵¹ In addition, PG&E was sufficiently confident concerning its financial outlook to affirm its full-year earnings guidance, even as the utility conceded that the total cost for natural gas pipeline related actions was likely to exceed \$1.4 billion.¹⁵²

The confidence PG&E projects to investors with regards to its ability to absorb a significant, and warranted fine on its earnings calls is consistent with PG&E's own expert testimony before the Commission. PG&E's financial expert, Mr. Eric O. Fornell of Wells Fargo Securities described a \$2 billion fine as "difficult" and "challenging," but nevertheless conceded that PG&E had the capacity to weather such a penalty:

MR. MEYERS: So let's suppose hypothetically that San Bruno achieves what it would like to achieve in these proceedings and that the fine imposed upon Pacific Gas and Electric Company

¹⁴⁷ *Id.*

¹⁴⁸ Decision 11-11-001 at 40.

¹⁴⁹ Q1 2013 PG&E Corporation Earnings Conference Call (Thursday, May 2, 2013 11:00 a.m. ET) available at: <http://investor.pgecorp.com/phoenix.zhtml?c=110138&p=irol-eventDetails&EventId=4941305>

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

for the 2010 San Bruno disaster is in the neighborhood of \$2 billion; and suppose Mr. Earley comes to you as an investment banker and says, "Eric, we need to issue stock to cover this." Can you tell me what you would be advising him regarding that?

MR. FORNELL: I would tell him "don't do it all at once".

MR. MEYERS: Okay. Over what period of time?

MR. FORNELL: Well, he'd have a real challenge because, first of all, that number would greatly exceed the market expectations; the stock would be beaten down; there would be a lot of people wanting to sell the shares. He has a roughly four and a half to six billion dollars a year of capital that he needs to spend in order to build out the infrastructure which would in and of itself be higher than any other utility as a percentage of market capital over the last four years, except for the two big utilities that -- the two utilities, one big, one small, that made some significant acquisitions. I would tell him that he's just going to have to work it out over time and maybe even scale back on his cap ex, because there could be some real challenges in terms of raising that amount of capital that - together with all of the infrastructure that they want to build out. So it would be a challenge. Just see how the market reacts. And wouldn't rush to the market.

MR. MEYERS: Is it doable?

MR. FORNELL: I'm not sure. I'm not sure. It's highly risky.

MR. MEYERS: But your advice would be to proceed in tranches with stock issuance?

MR. FORNELL: I'd see how the stock settled down and see what kind of -- how investors react, which is going to be heading for the exits, and then think about the capex, because that's an awful lot of capital to raise over the next four years. You put that much on top of it that's going to go out basically at the zero return, that's going to be a big challenge.

MR. MEYERS: But you're up to the challenge, aren't you, sir?

MR. FORNELL: Look, I embrace all kinds of challenges, but you've asked for my advice, and I think that would be a very difficult situation to be in.¹⁵³

¹⁵³ Evidentiary Hearing Transcript (PG&E/Fornell) at 1587- 1588 ((March 5, 2013)

In addition, Mr. Fornell admitted that a \$2 billion fine was “doable” and acknowledged that PG&E would survive such a penalty:

MR. MEYERS: Thank you for that clarification. So this Commission could in its wisdom decide to impose a fine that is in excess of the investor expectations.

MR. FORNELL: Yes.

MR. MEYERS: And it has every right to do so.

MR. FORNELL: Yes.

MR. MEYERS: Thank you. In answer to my question to you about your conversation -- your hypothetical conversation with, Mr. Earley, I believe you said that it would be difficult, but it would be doable, to issue equity or raise capital sufficient to pay a \$2 billion hypothetical fine. I think your words were "it was doable"; is that correct?

MR. FORNELL: I said -- I think I said it may be doable.

MR. MEYERS: May be doable

MR. FORNELL: But it would have some consequences in terms of having to limit future capital expenditures., and we would have to see where things settle out. But it would be a disaster.

MR. MEYERS The Company would survive, wouldn't it?

MR. FORNELL Probably.¹⁵⁴

Finally, and perhaps most importantly, Mr. Fornell properly recognized that the Commission’s right to impose a fine is not circumscribed in any manner by investor expectations.

2. The Gravity and Severity of PG&E Violations

The Commission has made clear that “violations which cause ‘actual physical harm to people or property are generally considered the most severe’ type of offense.”¹⁵⁵ It is difficult to dispute that the worst natural gas disaster in California’s history is not “grave” or “severe.”

¹⁵⁴ Evidentiary Hearing Transcript (PG&E/Fornell) at 1637, lines 21-28 through 1638, lines 1-19.
¹⁵⁵ 84 CPUC 2d at 188, 193

3. PG&E's Conduct Evidences a Lack of Good Faith

PG&E is not acting in good faith before this Commission. It has said, “we are sorry, but we did nothing wrong.”¹⁵⁶ In this regard, PG&E is the corporate equivalent of Dr. Jekyll and Mr. Hyde. We have the images of hard working line employees and the soothing voice—over from Mr. Earley describing a company that has “lost its way”¹⁵⁷ but, fear not, with the dedication of its wonderful “folks” it is changing for the better. We have the testimony of PG&E witnesses and post 2010 employees describing new and better systems of record keeping, integrity and risk management, pipeline safety work and all manner of corporate improvements costing “billions.”¹⁵⁸ And we have the contrite admissions of sorrow and regret from the public relations department. Contrast this with the “Mr. Hyde” legal team of PG&E which attempts to spin straw into gold through over hundreds of pages of legal legerdemain in a desire to show that, notwithstanding the unanimous opinion of every official investigation of the disaster, PG&E did nothing legally wrong...well almost nothing, a missing work clearance here and a botched drug test there...but substantively no violation of state or federal law.¹⁵⁹ Only a lawyer from the famous Jarndyce v. Jarndyce (Bleak House by Charles Dickens) could fully appreciate the legal gymnastics required to flip the common law on its head by suggesting that the knowledge and omissions of the servant are NOT imputed to the master;¹⁶⁰ that evidence of remedial action is NOT indicative of past failures;¹⁶¹ that un-

¹⁵⁶ See, e.g., Opening Brief of Pacific Gas and Electric Company at 147 (March 11, 2013)

¹⁵⁷ Evidentiary Hearings in I.12-01-007 (Yura/PG&E) at p. 973, Lines 13-28 through p. 974, Lines 1-15; Jaxon Van Derbeken, PG&E's ads: Utility “Lost Its Way,” San Francisco Chronicle, (7/17/12), <http://www.sfgate.com/bayarea/article/PG-E-s-ads-Utility-lost-its-way-3714243.php>

¹⁵⁸ See, e.g. PG&E's Revised Testimony of Kris Keas (Chapter 4, Integrity Management) at 4-1 to 4-1; PG&E Testimony (Chapter 10.B, Emergency Response Improvements) (I.12-01-007)

¹⁵⁹ PG&E Opening Brief at 5.

¹⁶⁰ Reply Brief of the City of San Bruno in I.12-01-007 at 13-15 (April 25, 2011)

¹⁶¹ Reply Brief of the City of San Bruno in I.12-01-007 at 24 (April 25, 2011)

refuted evidence does NOT preponderate;¹⁶² that *res ipsa loquitor* does NOT mean a pipeline is legally defective if it blows up;¹⁶³ and that causality is NOT a single isolated event but a chain of misdeeds.¹⁶⁴ PG&E hired a crack legal team and paid dearly for it. What it should have done is sought mercy. It is now not entitled to any.

Section 2104.5 of the California Public Utilities Code requires the Commission to consider the “good faith” of PG&E “in attempting to achieve compliance, after notification of a violation” when determining the amount of any penalty. Commission Decision 98-12-075 similarly requires the evaluation of utility conduct “to prevent, detect, disclose and rectify” its violations. If you fail to acknowledge your mistakes, how can you “rectify” the problem that caused the mistake? Scrutiny of PG&E’s conduct prior to and during the Line 132 Explosion and throughout the Line 132 Explosion Investigatory Proceedings makes clear that the utility was neither acting in good faith, nor engaged in conduct designed to prevent, detect, disclose and rectify its violations then or now. To the contrary, PG&E has adopted a “by any means necessary” approach to obscure its responsibility for the Line 132 Explosion and insulate itself to the maximum extent possible from any penalties or fines this Commission may elect to impose.

According to the Commission, consideration of utility conduct is required because a public utility has an “important role” in preventing, detecting, disclosing and rectifying violations. The Commission described that role as follows:

(1) The Utility's Actions to Prevent a Violation

Prudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations, and *most critically, the utility*

¹⁶² Reply Brief of the City of San Bruno in I.12-01-007 at 8-13 (April 25, 2011)

¹⁶³ Reply Brief of the City of San Bruno in I.12-01-007 at 13-15, 33-34 (April 25, 2011)

¹⁶⁴ Reply Brief of the City of San Bruno in I.12-01-007 at 29-32 (April 25, 2011)

regularly reviewing its own operations to ensure full compliance. In evaluating the utility's advance efforts to ensure compliance, the Commission will consider the utility's past record of compliance with Commission directives.

(2) The Utility's Actions to Detect a Violation

The Commission expects public utilities to *monitor diligently their activities. Where utilities have for whatever reason failed to meet this standard, the Commission will continue to hold the utility responsible for its actions.* Deliberate, as opposed to inadvertent wrong-doing, will be considered an aggravating factor. The Commission will also look at management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel. *The Commission will closely scrutinize any attempts by management to attribute wrong-doing to rogue employees. Managers will be considered, absent clear evidence to the contrary, to have condoned day-to-day actions by employees and agents under their supervision.*

(3) The Utility's Actions to Disclose and Rectify a Violation

When a public utility is aware that a violation has occurred, the Commission expects the public utility to promptly bring it to the attention of the Commission. The precise timetable that constitutes "prompt" will vary based on the nature of the violation. *Violations which physically endanger the public must be immediately corrected and thereafter reported to the Commission staff.* Reporting violations should be remedied at the earliest administratively feasible time.

Prompt reporting of violations furthers the public interest by allowing for expeditious correction. For this reason, steps taken by a public utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.¹⁶⁵

PG&E has not acted in good faith with respect to these proceedings. To the extent that section 2104.5 of the California Public Utilities Code considers "good faith" as mitigation, PG&E deserves none. PG&E's litigation strategy is simply defined in the words of its lawyers during these proceedings and in its briefs:

It is human nature when bad things happen to look for someone to blame. And make no mistake about it, that is what this proceeding is all about. While PG&E acknowledges that it is responsible for this terrible accident and its consequences,

¹⁶⁵ Decision 98-12-075

it does not agree that once that pipe was put in the ground in 1956 there was anything any operator would reasonably have done that would have prevented this tragedy. Nor does PG&E agree that any of the alleged safety violations contributed in any way.¹⁶⁶

Copious numbers of violations of federal and state law, some continuing for fifty years, and some still exist – is this “good faith of the person charged in attempting to achieve compliance”? We think not. PG&E’s senior management has embraced a “take no prisoners” litigation strategy. PG&E treats the Commission, and any effort by the Commission to exercise its authority to ensure the safety of PG&E customers with contempt. PG&E does this because such tactics have been successful for the utility in the past. PG&E has been here, facing Commission scrutiny, before: the 2001 PG&E bankruptcy,¹⁶⁷ the 2003 fire at a Mission electrical substation,¹⁶⁸ the investigation into inappropriate PG&E employee conduct with anti-Smart Meter groups,¹⁶⁹ and the 2008 explosion of a PG&E distribution line in Rancho Cordova, California.¹⁷⁰ This is not the utility’s first rodeo. PG&E could reload its slash-and-burn litigation strategy and amoral over-intellectualization of the facts in its sleep in order to emerge largely unscathed, pay its fine and continue operating as before, business as usual.

The Commission has the power to reduce, modify, mitigate or suspend a portion of the fine imposed where a utility demonstrates "good behavior." However, the Commission and ALJs also have the authority and the obligation to evaluate whether, in light of PG&E’s extensive history of misconduct and bad faith approach to these proceedings, the utility actually deserves time off, or time served for “good behavior.”

¹⁶⁶ Hearing Transcript I.12-01-007 (September 25, 2012), p. 49, lines 24-28; p. 50, lines 1-7.

¹⁶⁷ *See, e.g.* I.02-04-026.

¹⁶⁸ D.06-02-033.

¹⁶⁹ I. 12-04-010.

¹⁷⁰ Investigation 10-11-013.

Not one dollar of the fine should be suspended in these three OIIs because PG&E has not acted in good faith in these proceedings from the day of the Line 132 Explosion until now, over two and a half years after the Line 132 Explosion. Whether PG&E has demonstrated good faith goes to a fundamental question: if PG&E is only admitting to two minor violations relating to drug testing and a work clearance form, how is PG&E acting in good faith? PG&E cannot prove that they will fix the numerous and egregious deficiencies in its system when they are only admitting to doing two minor violations. CP&S's violations are the best proof that PG&E is fundamentally broken. If PG&E can't learn its lesson at this stage in the proceedings and admit to its wrongdoing, this Commission should not forgive PG&E and suspend the fine. If the Commission suspends the fine for "good behavior," the Commission is sending a message to utilities that if they blow up a neighborhood, kill 8 people, injure 66 people, and don't admit to it, they will only have to pay for a portion of the consequences. PG&E shouldn't be rewarded for good behavior in the future if the company won't take responsibility in the first place. Any consideration of possible relief for "good behavior, by the Commission should be tempered by maximization of fines and penalties for "bad behavior."

If this Commission concludes that a fine of \$1.25 billion is appropriate, it should do so because of the absence of good faith as evidenced by PG&E's conduct through these proceedings, nor should it reduce, mitigate or suspend such fines in any way, for the very same reason.

4. The Totality of the Circumstances

The Commission employs a "totality of the circumstances test" in connection with

penalty assessment “in furtherance of the public interest.”¹⁷¹ Pursuant to the test, the Commission attempts to “set a fine at a level that effectively deters further unlawful conduct by the subject utility and others,” which “requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case.”¹⁷²

PG&E will no doubt urge the Commission to review opinions that the utility contends mitigate its degree of wrongdoing, however, the Commission is also bound to evaluate facts “that exacerbate the wrongdoing.” Most importantly, “[i]n all cases,” the Commission evaluates harm “from the perspective of the public interest,”¹⁷³ not the utility, not utility shareholders, not investment banks, not underwriters, and not investment analysts that cover the utility industry beat.

In analyzing the appropriateness of the penalty following the loss of one life and one home to a PG&E Explosion in Rancho Cordova, California, the Commission expressly distinguished the facts and circumstances of the PG&E incident in Rancho Cordova from the following instances in which the Commission imposed “large” penalties on public utilities:¹⁷⁴

Year	Penalty	Utility	Nature of Violations	Decision
2002	\$27 million	Pacific Bell Telephone	Broadband service billing problems	D.02-10-073
2002	\$20.34 million	Qwest Communications Corporation	“Slamming,” unauthorized billing	D.02-10-059

¹⁷¹ Decision 98-12-075

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Decision 11-11-001 at 41-42.

2004	\$12.14 million	Cingular Wireless	collection of early termination fees	D.04-09-062
2008	\$30 million	SCE	false reporting of performance based ratemaking mechanism data	D.08-09-038
2010	\$14.35 million	SDG&E	wildfire caused by defective tree trimming and vegetation management	D.10-04-047

According to the Commission, none of the above-listed decisions and fines imposed in connection therewith were relevant precedent because “none of these five decisions involved loss of life, or the failure of the public utility to offer the underlying public utility service in a safe and reliable manner.”¹⁷⁵

PG&E settled matters related to explosion of its distribution line in Rancho Cordova, California for \$38 million, the largest fine in Commission history.¹⁷⁶ In reaching that settlement agreement, the Administrative Law Judge evaluating the terms of a proposed settlement between PG&E and Intervenors estimated that PG&E faced up to \$97 million in penalties for stipulated violations.¹⁷⁷ Decision 11-11-001 expressly characterized \$97 million in penalties for the loss of one life and one home to a PG&E explosion in Rancho Cordova, California as “moderate to large in comparison to the size of PG&E’s operation of its public utility business and would serve as a significant deterrent to ensure that similar incidents do not occur in the future,” when rejecting the initial settlement proposal of \$26 million on the grounds that it was “too low,” “unreasonable” and “not in the public interest” based on “...the gravity and severity of the offenses admitted to in the PG&E and CPSD stipulation, the statutory obligation of

¹⁷⁵ *Id.* at 42.

¹⁷⁶ I.10-11-013.

¹⁷⁷ Decision 11-11-001 at 41.

PG&E to provide safe and reliable gas service, PG&E’s own acknowledgement of its employees’ failures to follow procedures, the untimely response by PG&E, the resulting death, other injuries and property damage and this Commission’s and the public interest in ensuring safe and reliable natural gas service.”¹⁷⁸

Even PG&E, and the best lawyers and experts it can buy, cannot establish any relevant precedent for the Line 132 Explosion. The expert financial report proffered by PG&E in the Line 132 Explosion Investigative Proceedings lists a series of “precedent penalties” in “fatal gas pipeline accidents since 1999,” as follows:¹⁷⁹

Figure 10: Precedent Fines / Penalties³⁴

Event	Event Date	Total Penalties (\$MM)	Commentary
UGI Corporation Allentown, PA	February 9, 2011	\$0.4	Gas leak and explosion; loss of five lives and three serious injuries
Kleen Energy Plant Middletown, CT	February 7, 2010	16.0	Plant explosion during natural gas pipeline purging; loss of six lives and fifty injured
PG&E Corporation Rancho Cordova, CA	December 24, 2008	38.0	Natural gas leak and explosion; loss of one life and five injuries
Dominion Peoples Nat Gas Company Plum Borough, PA	March 5, 2008	0.1	Natural gas pipeline explosion; loss of one life and one serious injury
Public Service Enterprise Group Bergenfield, NJ	December 13, 2005	0.4	Pipeline rupture and explosion; loss of three lives and five people hospitalized
El Paso Corporation Carlsbad, NM	August 19, 2000	101.5	Natural gas pipeline rupture; loss of twelve lives
Olympic Pipeline Company Bellingham, WA	June 10, 1999	28.5	Pipeline rupture and ignition; loss of three lives

As a threshold matter, PG&E’s own witness disavowed each of the “precedent penalties” within his own report when he stated that the above listed matters were “very different circumstances,”

MR. MEYERS: My question goes back to the definition of "precedent" that we agreed upon. "Precedent" refers to similar circumstances. And my point to you, sir, is that in the four examples that I have given to you, those are indeed not similar circumstances. Would you agree?

¹⁷⁸ Decision 11-11-001 at 41-42.

¹⁷⁹ *Report of Wells Fargo Securities Responding to: Overland Consulting’s August 21, 2012 Report, Financial Analysis of PG&E Corporation* at 21, Figure 10 (January 11, 2013)

MR. FORNELL: Those are very different circumstances, yes.¹⁸⁰

For that reason alone, the “precedent penalties” proffered by PG&E are entitled to no weight.

There is no precedent for the Line 132 Explosion. A large diameter pipeline in a high consequence area ruptured. The El Paso Corporation explosion involved a large diameter pipeline, but a entirely different, rural area.¹⁸¹ Other pipeline explosions cited in PG&E testimony involve pipelines of significantly smaller diameter. An explosion involving a power plant is not a proper comparison because such uses are frequently located far from the types of homes, parks and schools affected by the Line 132 Explosion.

The Line 132 Explosion is also distinguishable from other pipeline disasters because of the perpetrator. PG&E is one of the largest gas distribution utilities in the country, serving nearly 15 million customers throughout Northern California. When PG&E engages in misconduct, it puts far more people at risk as compared with the other providers identified in PG&E’s “precedent penalties”. PG&E’s about-face on the above listed “precedent penalties” is not surprising, given that none of the cited disasters withstand superficial scrutiny.

C. Pipeline Safety Enhancement Program (“PSEP”) Disallowance

San Bruno supports the disallowance proposals set forth in the Opening Brief of TURN¹⁸² and DRA¹⁸³ and urges their adoption by the Commission.

¹⁸⁰ Evidentiary Hearing Transcript (PG&E/Fornell) at p. 1584, Lines 23-28 through p. 1585, Lines 1-4 ((March 5, 2013).

¹⁸¹ NTSB/PAR-03/01 PB2003-916501

¹⁸² Opening Brief of TURN in Root Cause OII (I.12-01-007) at 6-8(I.12-01-007).

¹⁸³ Opening Brief of DRA in Root Cause OII (I.12-01-007) at 9-11.

V. REMEDIES

A. Applicable Legal Standard

California courts have long held that the Commission's powers are broad and should be liberally construed.¹⁸⁴ Accordingly, the Legislature enacted Public Utilities Code Section 701, granting the Commission broad authority to “*do all things, whether specially designated in [the Public Utilities Act] or addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.*”¹⁸⁵ However, any additional powers that the Commission exercises “must be cognate and germane to the regulation of public utilities”¹⁸⁶

The Commission's stated mission is to serve “the public interest by protecting consumers and ensuring the provision of *safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy*”¹⁸⁷ (emphasis added). Imposition of equitable remedies designed to advance public safety objectives in these Line 132 Investigatory Proceedings directly addresses the Commission's mission. As such, the equitable remedies San Bruno advocates for herein are “cognate and germane” to the Commission's regulation of utilities.

B. San Bruno Requests that the Commission Establish the California Pipeline Safety Trust

San Bruno respectfully requests that the Commission establish an independent advocacy trust, the “California Pipeline Safety Trust” and direct PG&E to provide an endowment of \$5 million per year to support the advocacy work of the California

¹⁸⁴ *Pacific Bell Wireless, LLC v. Public Utilities Com'n of State of Cal.* (2006), 140 Cal.App.4th, 718, 736; *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891.

¹⁸⁵ *Id.* at 736, citing *Consumers Lobby, supra*, 25 Cal.3d at 905-906, emphasis added.

¹⁸⁶ *Consumers Lobby, supra*, 15 Cal.3d at 905-906.

¹⁸⁷ See <http://www.cpuc.ca.gov/PUC/aboutus/pucmission.htm>

Pipeline Safety Trust for no less than 20 years. In connection with its establishment of the California Pipeline Safety Trust, the Commission may provide for PG&E to seek contribution from other regulated pipeline operators. Board members for the California Pipeline Safety Trust shall be nominated in such a manner as to minimize potential conflicts of interest with utilities and the Commission.

In the aftermath of the Olympic Pipeline Tragedy in Bellingham Washington in 1999, the U.S. Department of Justice directed the establishment of an endowment to fund the National Pipeline Safety Trust (the “NPST”).¹⁸⁸ In its short tenure, the NPST has had success in raising the profile of natural gas safety matters at the federal level:

- Provided a public interest perspective on natural gas pipeline safety in testimony before Congress, in the media, at conferences and industry meetings;
- Worked with local government and citizen groups to provide education and capacity building on natural gas pipeline safety issues;
- Operates the largest natural gas pipeline safety website outside of PHMSA;
- Held seven (7) national pipeline safety conferences; and
- Served on numerous advisory committees and provided expert testimony concerning natural gas pipeline safety at the behest of PHMSA, the NTSB, and state regulators.

Like its national predecessor, the purpose of the California Pipeline Safety Trust is to ensure that when industry, regulatory agencies and legislative action are inadequate, public safety and health will be represented by an independent, well-funded, credible pipeline safety organization. Proper oversight over the implementation, not only of PG&E’s PSEP, but the other equitable remedies the Commission imposes in connection

¹⁸⁸ Consent Decree between the United States of America and Shell Pipeline Company, LP fka Equilon Pipeline Company, LLC, CV02-1 178R (2003)

with the Line 132 Investigatory Proceedings is essential. In addition, a California Pipeline Safety Trust will:

- Ensure that California citizens and emergency responders are represented in policymaking, ratemaking and investigatory proceedings that bear on natural gas safety matters before the Commission;
- Promote a regional pipeline system in which technology, policy, and practice together provide the safest possible means of transporting gas across California; and
- Promote independent scrutiny of natural gas pipeline investment, maintenance and operations

San Bruno believes the California Pipeline Safety Trust is necessary to (1) establish a long-term partnership with local communities, government and industry within California to improve and enhance pipeline safety; (2) increase accountability for safety for intrastate pipelines through enhanced public participation, independent oversight of state and federal regulators, and transparency; and (3) increase public pipeline safety awareness and confidence in the pipeline systems within California.

C. Appoint an Independent Monitor to Oversee PG&E Compliance with the PSEP and Remedies Imposed in this Proceeding

The Commission should direct PG&E shareholders to pay for an Independent Monitor and any necessary consultants to complement plans build oversight capacity at the Commission. The Independent Monitor and necessary consultants should be provided with the authority to evaluate and review PG&E compliance with the Pipeline Safety Enhancement Plan (“PSEP”) in R.11.02.019 and any and all fines and remedies imposed by the Commission in the Line 132 Explosion Investigatory Proceedings. The Independent Monitor and necessary consultants should be experienced in pipeline engineering and pipeline safety. If the Independent Monitor and necessary consultants

identify an immediate threat to public safety, the Independent Monitor should promptly report the potential violation within 24 hours to the presiding Administrative Law Judges in OIIs I.12-01-007, I.11-02-016, and I.11-11-000 and CPSD. If the Independent Monitor and necessary consultants identify a potential violation of the PSEP remedies or the remedies imposed in connection with these Line 132 Explosion Investigatory Proceedings, the Independent Monitor should be required to report the potential violation within 5 days to the presiding Administrative Law Judges in OIIs I.12-01-007, I.11-02-016, and I.11-11-000 and CSED. The Independent Monitor should also be required to report to the Commission and the public regarding the status and quality of PG&E's compliance with the PSEP, and the remedies imposed in these proceedings, on a quarterly basis. Finally, the Independent Monitor and necessary consultants should be prohibited from seeking work from PG&E and other regulated utilities for a period of three years following receipt of any compensation related to work for the Independent Monitor.

PG&E's failure to operate and manage a safe system and the Commission's inability to supervise PG&E are well documented.¹⁸⁹ Given the safety matters at issue, PG&E and the Commission cannot be left, once again, to police themselves. The Commission did not have the necessary resources to regulate PG&E before the Line 132 Explosion, nor does the Commission have the resources now to effectively oversee PG&E's compliance with the PSEP, a massive undertaking that will take place over the next ten years, or the fines and remedies adopted in these investigatory proceedings. Indeed, the Independent Review Panel found that the Commission didn't have the resources to detect PG&E's deadly shortcomings before the explosion: "the CPUC did

¹⁸⁹ See section III.B, *supra*.

not have the resources to monitor PG&E's performance in pipeline integrity management adequately or the organizational focus that would have elevated concerns about PG&E's performance in a meaningful way.”¹⁹⁰

Only an independent monitor can provide a level of oversight commensurate with the danger posed by PG&E operations. Only an independent monitor can facilitate restoration of the public trust in PG&E's ability to manage and the Commission's capacity to oversee a safe, reliable natural gas system.

The need for the more robust oversight of PG&E operations and performance is self-evident. Specifically, the NTSB found that the ineffective enforcement posture of the CPUC allowed PG&E's organizational failures to continue for decades.¹⁹¹ In its probable cause analysis, the NTSB also highlighted the fact that the CPUC failed to detect the inadequacies of PG&E's pipeline integrity management program.¹⁹² The NTSB also found that PHMSA did not have an effective oversight and enforcement program.¹⁹³ The NTSB found that PHMSA's enforcement program and its monitoring of state oversight programs, such as the CPUC, were weak and resulted in lack of effective federal oversight and state oversight by the CPUC.¹⁹⁴ In the NTSB final report hearing, NTSB Chairman Deborah Hersman commented on the need for pipeline safety regulators' role: "We've heard a lot of promises, but now what we're asking is ... that regulators are tough . . . the regulators are the only ones that are standing between the operators and the public, and the public is counting on them to make sure the operators

¹⁹⁰ IRP Report at 5

¹⁹¹ NTSB Report at 122.

¹⁹² NTSB Report at xi.

¹⁹³ *Id.*

¹⁹⁴ NTSB Report at 88.

are doing the right thing."¹⁹⁵ NTSB Board Member Robert Sumwalt echoed Chairman Hersman's issues with the pipeline safety regulators: "This accident is not just about the failure of a seam in a pipeline. Rather it's about a failure of an entire system -- a system of checks and balances that should have been put in place to prevent the disaster."¹⁹⁶

In its review of PG&E operations following the explosion of PG&E's Line 132, the Independent Review Panel ("IRP") Report cited concerns that "top management...interests and expertise lie in financial performance which dilutes the company's focus on one of its core missions – that of safe and reliable natural gas service." Given PG&E's inappropriate and misplaced focus on financial performance rather than safety and reliability, it is not surprising that the NTSB determined that the "probable cause" of PG&E's Line 132 explosion was PG&E's inadequate programs quality assurance, quality control and integrity management programs.

According to the NTSB, the Commission, "as the regulator for pipeline safety within California, failed to uncover the pervasive and long-standing problems within PG&E. Consequently, this failure precluded the [Commission] from taking any enforcement action against PG&E."¹⁹⁷ This led the NTSB to conclude that the "ineffective enforcement posture of the [Commission] permitted PG&E's organizational failures to continue over many years."¹⁹⁸ The IRP was similarly critical of the Commission, finding that "[the Commission] must summon up the courage and resources to monitor the prudence of the operator's program, its effectiveness and analysis of the

¹⁹⁵ NTSB Press Release, *NTSB cites Pacific Gas & Electric (PG&E) and government oversight in fatal California pipeline rupture*, (August 30, 2011) available at <http://www.nts.gov/news/2011/110830.html>

¹⁹⁶ CNN Wire Staff, *Utility accepts liability for 2010 California pipeline rupture*, (December 13, 2011) available at: <http://www.cnn.com/2011/12/13/us/california-pge-responsibility>

¹⁹⁷ NTSB at 122

¹⁹⁸ NTSB at 123.

program results to manage the system risks.”¹⁹⁹ The IRP Report also recommended that the Commission make the “the commitment to move to more performance-based regulatory oversight of utility pipeline safety.”²⁰⁰

San Bruno remains concerned that the Commission lacks the resources, expertise and capacity to adequately oversee PG&E’s implementation of the PSEP without outside assistance. Without sufficient resources, expertise and capacity, the Commission cannot protect against staff lapsing into a more complex version of the paper-based, box-checking audits that proved ineffective in identifying problems with PG&E’s operation and management of its system prior to the Line 132 explosion.

Commissioner Simon’s concurrence properly lamented the Commission’s “regrettable” decision to forego an independent monitor as follows:

The Decision should have ordered PG&E to hire an Independent Monitor who would report to the Commission and the public regarding the status and quality of PG&E’s work, in addition to the ongoing monitoring work done by the California Public Utilities Commission Division of Safety and Enforcement staff.²⁰¹

San Bruno shares Commissioner Simon’s view. An independent monitor could prove an advantageous companion to the Commission’s oversight of PSEP Implementation and check against Commission lapses would be required as follows:

- Review all reports and documentation submitted by PG&E and the Commission to determine whether or not PG&E and the Commission have complied with the provisions of the Decision;
- Review programs, plans and modifications proposed by PG&E to determine whether they comply with the Decision and make recommendations to the Commission regarding the same;

¹⁹⁹ IRP Report 98-99.

²⁰⁰ IRP Report at 27

²⁰¹ *Concurrence of Commissioner Timothy Alan Simon on Item 26 Decision D.11-10-010 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 Ratesetting Mechanisms* (October 12, 2011)

- Conduct site visits to review record-keeping practices and operations in the field;
- Report to the Commission and the public concerning any instances of non-compliance with the Decision;
- Submit an annual report on all findings to the Parties and the public in this proceeding.

Independent monitors have previously served precisely this function in the wake of other similar tragedies.²⁰²

Engagement of an independent monitor to oversee PG&E and Commission performance is a responsible course of action that would demonstrate that the Commission recognizes limitations in its own expertise, capacity and resources and the extent to which such limitations threaten to undermine effective evaluation of PG&E's PSEP implementation and PG&E's compliance with the fines and remedies imposed in the Line 132 Explosion Investigatory Proceedings.

The NTSB investigation, the Independent Review Panel and the evidentiary record in R.11-02-019 are replete with examples not only of PG&E's abject mismanagement of its natural gas system, but also a pattern and practice of lackluster oversight and enforcement of PG&E obligations by the Commission.²⁰³ In order to repair systematic defects in the Commission's regulatory relationship with PG&E, robust oversight from an independent monitor is essential. Not only that, independent monitor

²⁰² See pp. 30-31 of British Petroleum's consent decree with the U.S. Environmental Protection Agency at <http://www.epa.gov/compliance/resources/decrees/civil/cwa/bpnorthslope-cd.pdf>; <http://www.epa.gov/compliance/resources/cases/civil/cwa/olympicshell.html>; Consent Decree in *US v El Paso Natural Gas Co.* (Dist. Ct. New Mexico) at 12 and et seq., available at emerginglitigation.shb.com/Portals/f81bfc4f-cc59-46fe-9ed57795e6eea5b5/r_El_Paso_Natural_Gas_Consent_DecreeFinal.pdf

²⁰³ See, section III.B, *supra*.

evaluation of PG&E and the Commission's performance is necessary to restore badly battered public trust in the wake of the Line 132 explosion.

The Commission's ineffective oversight and enforcement was a meaningful contributor to PG&E's ongoing failure to operate and manage a safe system. Unfortunately for California ratepayers, the Commission's failed record on safety is not an abstract concept or historical relic. It is a pervasive regulatory condition that the Commission has yet to successfully diagnose, treat and ultimately eradicate. An internal Commission Report drafted by consultants engaged by the Commission and recently released to the press and the parties to this proceeding conclusively demonstrates that even two and a half years after the Line 132 Explosion the safety culture at the Commission remains broken. The previously confidential report determined that:

Staff lack the necessary tools and supports for effective safety analysis . . . PUC staff and managers lack the training, time, processes, and management support to effectively identify, analyze, and move forward safety concerns and considerations.

San Bruno is deeply troubled by the fact that the Commission still lacks the necessary resources, focused management and the administrative will to put safety first. Every customer in PG&E's service territory should feel exactly the same way: you're on your own when it comes to safety and holding PG&E accountable.²⁰⁴

To reverse the tide of cynicism, distrust and insecurity, the Commission must take responsibility for its history of regulatory capture and its well-recognized role in enabling the Line 132 explosion. San Bruno urges the Commission to do so by providing for engagement of an independent monitor as an equitable remedy in these proceedings.

²⁰⁴ California Public Utilities Commission Safety Culture Change Project, Initial discovery report, Business Advantage Consulting (Jan. 25, 2013).

D. Emergency Response Remedies

The NTSB found that PG&E's emergency response procedures in place at the time of the explosion and emergency response after the explosion were deficient.²⁰⁵ Specifically, the NTSB found that PG&E did not have detailed and comprehensive procedures for responding to large-scale emergencies, such as a transmission line break.²⁰⁶ The NTSB also found that the 95 minutes that PG&E took to stop the flow of gas by isolating the rupture site was excessive and increased the risk of danger to life and property.²⁰⁷ To remedy such deficiencies, San Bruno requests that the Commission require PG&E to implement the remedies set forth below.

1. Establishment of the Peninsula Emergency Response Fund

The Commission should direct PG&E shareholders to pay \$150 million over three fiscal years in equal installments that will be placed in a trust and dedicated to a newly established Peninsula Emergency Response Fund. The Fund will focus on enhancing the Peninsula's emergency preparedness and response. The Fund will assist cities on the Peninsula in San Mateo County with integrated regional systems for prevention, protection, response, and recovery to emergencies. The fund may also provide funding for certain fire, emergency response, police or sheriff buildings, facilities, and/or equipment. The fund will be managed by representatives of local government.

2. Require Specific Improvements to PG&E Education and Training

PG&E must improve its education and training programs. In furtherance of that goal, San Bruno requests that the Commission specifically require PG&E to:

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- Provide training to Gas Service Representatives to recognize the differences between fires of low-pressure natural gas, high-pressure natural gas, gasoline fuel, or jet fuel.
- Provide training to its Gas Service Representatives (GSRs) and Gas Control Operators to ensure that they coordinate effectively with emergency responders, follow PG&E's own internal procedures when responding to emergencies, and each GSR Gas Control Operators shall be trained and able to manually shut off valves. PG&E shall also audit its GSRs and Gas Control Operators annually to ensure that they are properly trained.
- Develop and deliver, to all staff, records management education and training sessions to provide records management skills and give staff an understanding of the responsibilities and tasks that relate to managing records. These sessions shall be updated and repeated at regular intervals at least twice annually to include amendments to the records management program and for the benefit of new staff.
- Develop specific and additional training for those staff involved directly in the management of retention and disposition of records.
- Develop specific and additional training focusing on all of the widely used recordkeeping systems such as SAP, GEMS, SharePoint, IGIS, ECTS. Employees and PG&E contractors who have duties using these programs shall be required to attend these training sessions.
- Improve Aerial Patrol Pilot training by using aerial photographs taken at an altitude of 750 feet, which replicates what the pilots see on patrol, and include a number of structures both within and outside of the 660 foot standard. Training shall also include a Well-Defined Area ("WDA") in the exhibit as well.
- Generate multiple training exams for patrolling to ensure that the trainee does not see the same exam upon subsequent requalification. New training exams shall include questions with greater detail and complexity than the current exam and shall use aerial photos as exam exhibits where pilots indicate which structures are approximately 660 feet from the right of way and would require reporting.

In addition to requiring PG&E to undertake the improvement efforts identified above, the Commission should require PG&E to demonstrate its compliance with the

above listed requirements in a manner such that the Commission, an Independent Monitor and the California Pipeline Safety Trust can evaluate the utility's compliance.

3. Require PG&E to Formalize its Emergency Response and Disclosure Obligations with Every City, County and Fire District in its Service Territory

PG&E operates in 49 counties and 243 cities throughout California.²⁰⁸ These communities cannot afford to rely on the PG&E Emergency Manuals and Public Awareness Plans that CPSD and the Intervenors have demonstrated violate the law. Local governments cannot trust PG&E to do what's necessary to protect its customers.

For these reasons, San Bruno urges the Commission to require PG&E to formalize its emergency response role and disclosure obligations with each city, county and fire district in its service territory either through a memorandum of understanding ("MOU") or by reforming PG&E's franchise agreements to make them conform to the public interest in protecting property used by the franchisee and responding to threats or catastrophes quickly and efficiently.

California courts have ratified Commission authority to "exercise equitable jurisdiction as an incident to its express duties and authorities," and "[p]ursuant thereto, it may, for example...reform contracts of public utilities to make them conform to the public interest."²⁰⁹ Franchise Agreements between PG&E and the local governments within whose borders they operate are contracts.²¹⁰ They are contracts that must be reformed to conform to the public interest in protecting property used by franchisees and responding to threats or emergencies in an efficient manner.

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²⁰⁹ *Wise v. Pacific Gas and Electric Co.*, (1999) 77 Cal. App. 4th 287, 299 (citing *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal. 3d 891, 907).

²¹⁰ *County of Alameda v. Pacific Gas & Electric Co.*, (1997) 51 Cal. App. 4th 1691, 1699.

A formal agreement, whether it be a MOU or modified franchise agreement, would allow local communities to require PG&E to provide them with the information and support they need to protect the public welfare and effectively respond in an emergency. For instance, requiring PG&E to formalize its emergency response role and disclosure obligations in advance of a disaster would give local communities the option to incorporate the following types of provisions designed to enhance the city or county's capacity to protect the public welfare:

- Any PG&E failure to comply with federal or state safety or environmental laws a breach of the MOU or franchise agreement.
- Eliminate perpetual or inordinately lengthy terms that prevent MOUs or franchise agreement requirements from being updated in a timely manner as laws, regulations, development patterns, safety practices and pipeline technology changes.
- Expressly incorporate language from section 6296 of the California Public Utilities Code making PG&E strictly liable for all damage caused in connection with the use or operation of a franchise, or by any pipeline or other facility failure, regardless of whether such damage was wholly or partially caused by a third party.
- Require PG&E to provide local government with current information, including relevant maps and records, regarding the physical location and characteristics of pipelines and other lines operating within the jurisdiction, including details and records regarding: which products a pipeline carries; its capacity and operating pressure; the materials it is made of; the method of welding used; the precise location of the pipeline and shutoff valves; and the location of the nearest utility yard with personnel qualified to shut off the gas (or other product conveyed via the pipeline) who are available to service the line in the event of an emergency 24 hours a day — and their contact information. Any failure to provide such information is a violation of the franchise agreement.
- Require PG&E to provide copies of the all environmental reports they file with environmental agencies;
- Require PG&E to notify local government officials immediately in the event of a spill or environmental or safety threat.

- Requires PG&E to remediate damage in accordance with applicable environmental laws.
- Require PG&E to provide the local government with copies of all safety-related reports and communications the operator files with the Commission.
- Require PG&E to provide copies of its emergency plan and public awareness plan to the local government on an annual basis and hold at least one face-to-face meeting with designated local department to review and update each plan.
- Require PG&E to carry out at least one disaster exercise involving the local government on an annual basis.

The well-documented breakdown in PG&E’s emergency preparedness and response on September 9, 2010 left San Bruno fire , police and city staff along with their fellow first responders from the greater peninsula fighting a raging inferno with one hand tied behind their back.²¹¹ Such circumstances demand a fundamental realignment of PG&E’s obligations where it is granted the privilege of using city and county streets and rights of way in furtherance of its monopoly. Circumstances demand that PG&E to give every city, county and fire district in its service territory the opportunity to formalize the utility’s emergency response role and disclosure obligations in advance of another disaster, whether it be through a MOU or by reforming and existing PG&E franchise agreement.

E. Direct PG&E to Undertake an Automated Safety Valve (“ASV”) Pilot Program Throughout its Service Territory

San Bruno requests that the Commission direct PG&E to install ASVs in all high consequence areas (“HCAs”) and undertake an ASV pilot program within six (6) months of the issuance of the Commission’s decisions in these matters. The ASV pilot program

²¹¹ See, section III.B, *supra*.

mandated by the Commission should be specifically calculated to fully resolve any remaining policy and technological issues associated with deployment of ASV devices and pave the way for ASVs, or their true equivalent, in terms of response time capability, to be deployed by PG&E and operational in all HCA's in the utility's service territory on an expedited basis in accordance with a specific timeline approved by the Commission. Remote control valves ("RCVs") are not ASV equivalents.

F. Modification of PG&E Long-Term and Short-Term Incentive Program Calculations to incorporate proper priorities

According to CPSD, PG&E has not amended its metrics for the Long-term Incentive Plan ("LTIP") and the utility's changes to its Short-term Incentive Plan ("STIP") are "minor and may not result in a notable difference in employee behavior."²¹²

CPSD explains the calculation of LTIP awards as follows:

The total value of the LTIP award is determined on a dollar basis, and converted into a number of shares based on the PG&E share price on the date of the award. LTIP bonuses are awarded as 50% restricted stock units that vest over a 4 year period and 50% performance shares that vest at the end of a 3-year performance period. The value of the Performance Shares are determined by shareholder return. The higher the shareholder return relative to a comparative group, the greater the reward.²¹³

According to CPSD testimony,

STIP is now based on 30% financials, 30% customer satisfaction (which can easily be manipulated), and 40% a composite of seven metrics. This means that "safety" may only be one seventh of 40%, or about 6%.²¹⁴

Each program still links employee financial rewards to shareholder return. The Commission should direct PG&E to revise its LTIP and STIP formulas such that safety is truly the single largest factor that determines employee financial rewards.

²¹² See, Addendum to the CPSD Staff Report, Section IX, at 1. I.12-01-007.

²¹³ *Id.*

²¹⁴ Rebuttal Testimony of Raffy Stepanian in I.12-01-007 at 59 (August 20, 2012).

VI. CONCLUSION

Historians will record that President Richard Nixon was impeached and forced to resign the Presidency not because of the burglary committed under color of his authority, but because he sought to cover up his involvement, evade responsibility, and ultimately he lied to the American people. Man is prone to error and disaster will happen. No system is either perfect or foolproof. PG&E did something very, very wrong and in doing so killed eight innocent souls and injured scores more.

But what PG&E did not have to do was choose a corporate defense strategy that sought to cover up its culpability and evade responsibility. No sane person having listened to or read through each and every official investigation and report could fail to come to the inescapable conclusion that Line 132 was unsafe for over a half a century and it is only by the grace of God that it did not explode in 1966, 1985, 1997, or 2003. Only a fool would believe that an integrity management system predicated on bad or non-existent records was “legal.” A lawyer can argue anything, but no competent engineer would argue that taking ninety minutes to turn off a 30 inch high pressure gas line in an urban area is “acceptable.” And finally, what responsible executive considers that financial performance trumps safety? Does anyone at PG&E believe that the Company can survive another Line 132 Explosion?

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The mistakes and violations are legion, but the sad truth is that PG&E has utterly failed to admit to this Commission and the people of California its breach of its covenant to operate a safe and reliable natural gas system.

Respectfully submitted,

/s/ Steven R. Meyers

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